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IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
WEST PALM BEACH, FLORIDA

RECORD ON APPEAL FROM THE CIRCUIT
COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION

ERNESTO BEHRENS,
APPELLANT

CASE NUMBER

98-5739 CF10A

STATE OF FLORIDA
APPELLEE

APPEAL NUMBER

4000-4484



VOL. 22

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IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739CF10A

JUDGE HOROWITZ

ERNESTO BEHRENS,

Defendant/Appellant,

vs.

COPY

STATE OF FLORIDA,

Plaintiff/Appellee.

-----X

APPEAL ON BEHALF OF THE DEFENDANT

November 13, 2000

9:00 O'CLOCK A.M.

THE FOLLOWING PROCEEDINGS WERE HELD
BEFORE THE HONORABLE ALFRED HOROWITZ AT THE BROWARD
COUNTY COURTHOUSE, 201 S.E. 6TH STREET, FT.
LAUDERDALE, FLORIDA, BEFORE ERLINDA N. RODRIGUEZ,
CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC, IN
AND FOR THE STATE OF FLORIDA AT LARGE.

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APPEARANCE:

OFFICES OF THE STATE ATTORNEY.
By: Ms. Dennis Segal, Esq.
Representing the Defendant.

LAW OFFICES OF JIM LEWIS, P.A.
By: Mr. Jim Lewis, Esq.
Representing the Plaintiff.

SENTENCING
HEARING NOV 13, 2000

1 to you again.

2 MR. LEWIS: For the record, I do object
3 to the Court taking judicial notice. It's
4 highly unfair. Particularly when new counsel
5 is involved and you're relying on testimony
6 given at the Williams Rule hearing.

7 THE COURT: I didn't say I was relying on
8 anything. I want the record to be pretty
9 clear on what's going on. The issue before me
10 is solely whether or not I'm going to grant
11 the State's motion to take judicial notice of
12 the Court preceding in this case. We haven't
13 gotten even to whether or not I'm going to
14 determine if it's relevant, give it any
15 weight, no weight or anything. I am strictly
16 deciding the issue on 92.02 and 203. Is there
17 anything either one of you want to say further
18 on this issue? It's a pretty narrow issue at
19 this point.

20 MR. SEGAL: Let me just say that on page
21 1064 it states that we hold a trial Court can
22 consider a defendant's prior arrest not
23 leading to convictions for purposes of
24 sentencing so long that the Court recognizes
25 that these arrests were not convictions of

1 findings of guilt and the defendant is given
2 an opportunity to explain or offer evidence on
3 the issue of prior arrests and that's a Fourth
4 District opinion of 1981 that was cited in
5 Reese versus State, 639 Southern Second 1067
6 with approval.

7 THE COURT: Anything else either of you
8 wish to present on the issue of whether under
9 202 or 203 I am going to take judicial notice?

10 MR. SEGAL: No, Judge.

11 MR. LEWIS: No.

12 THE COURT: Based on that, I had an
13 opportunity -- Mr. Segal, anything further at
14 your end?

15 MR. SEGAL: No, Your Honor.

16 THE COURT: Based on that and I had an
17 opportunity to review the motion and hear your
18 respective arguments, I think under nine 202
19 and 203 together. I think, I am required to
20 take judicial notice of the Court proceeding
21 in this case and I'm going to grant the
22 State's motion for judicial notice.

23 I have not made any finding or ruling as
24 to whether or not determine it's relevant or
25 anything along those line. We'll get there.

1 That's another issue to me. Now, as far as my
2 check list of things, I think, those are the
3 outstanding motions that were pending absent
4 the issue of sentencing are there any other
5 preliminary motions we have to address that
6 either of you are mindful of?

7 MR. LEWIS: Other than just asking you
8 specifically to reserve on the new evidence.

9 THE COURT: Anything else on your end
10 Mr. Segal?

11 MR. SEGAL: Well, my motion for upward
12 departure at sentencing.

13 THE COURT: Yes. The answer is yes.
14 Okay. Now, let me ask you this. We'll go to
15 the issue of sentencing. Beyond respective
16 arguments that each of you would want to
17 present and which I anticipate will be
18 somewhat lengthy, is there going to be any
19 testimony that you are going to present,
20 Mr. Segal?

21 MR. SEGAL: Judge, I don't know whether
22 or not the defense will stipulate to it or
23 not, I know the defendant has testified that
24 he has prior convictions of five offenses as
25 well as other convictions. I just want to

1 know if I have to present evidence about his
2 involvement in the Pompano Beach case and as
3 for the five convictions, do I need to present
4 evidence about that. The conviction in Las
5 Vegas, we talked bout that.

6 THE COURT: Ms. Woods is going to
7 testify?

8 MR. SEGAL: Ms. Wood wants to testify in
9 the sentencing hearing, but I don't know if I
10 should call the people from BSO fingerprints
11 to testify.

12 THE COURT: The question I'm trying to
13 decide is whether or not I want to dive into
14 sentencing right now or come back and 1:30..
15 Of course again today is Ernesto Behren's day
16 today so I want to get these issues conquered.

17 MR. SEGAL: I understand, I have the BSO
18 fingerprints person who compared the
19 defendant's standards to --

20 MR. LEWIS: We are willing to stipulate
21 to the Deputy five priors.

22 MR. SEGAL: The Pompano, the Palm Beach
23 withhold adjudication on grand theft and the
24 Las Vegas two misdemeanors?

25 MR. LEWIS: Yes.

1 THE COURT: Mr. Lewis, first of all, let
2 did you receive a copy of the PSI?

3 MR. LEWIS: No.

4 THE COURT: Okay. Let me give this to
5 you, Mr. Lewis. This kind of goes forward
6 with my thinking in terms of my schedule.
7 Just one second. Let me give you the PSI
8 prepared by Sandy Freidman. It's got many
9 attached letters and items of correspondence
10 that people sent in on Mr. Behren's behalf.

11 I understand that, you know, I'm just
12 handing it to you now and presumably have not
13 had an opportunity to read it much less even
14 scan it, so I think what I'm going to do is
15 resume the sentencing starting at 1:30 and I
16 just give you all this period of time to get
17 together any witnesses or argument that you
18 want to and we're going to conquer this this
19 afternoon. I'll everybody here at 1:30.
20 Thank you.

21 (Thereupon a recess was had
22 until 1:30.)

23 THE COURT: Let the record show
24 Mr. Behrens is present. Mr. Lewis, Mr. Segal
25 are present. Mr. Lewis, have you gone over

1 the presentence investigation?

2 MR. LEWIS: Yes, Judge.

3 THE COURT: Are you ready to proceed with
4 the issue of sentencing?

5 MR. LEWIS: Yes, sir.

6 THE COURT: Are you ready to proceed
7 Mr. Segal?

8 MR. SEGAL: Yes, Your Honor.

9 THE COURT: Okay. Let me hear from the
10 State first.

11 MR. SEGAL: Do you want to hear my motion
12 for upward departure?

13 THE COURT: Let me hear testimony. I
14 rather hear that in the context of argument
15 and everything else. Let me hear any
16 testimony you want to present.

17 MR. SEGAL: Denise Wood, the victim in
18 this case.

19 THE COURT: Good afternoon. Raise your
20 hand to be sworn in.

21 (Thereupon the witness was
22 sworn in.)

23 THE COURT: Your name for the record?

24 THE WITNESS: My name is Denise
25 Arsenault. At the time of trial it was Denise

1 Woods.

2 THE COURT: Spell your other last name?

3 THE WITNESS: A-R-S-E-N-A-U-L-T.

4 THE COURT: Your name, last name, right
5 now?

6 THE WITNESS: Arsenault.

7 THE COURT: Go ahead, Mr. Segal.

8 DIRECT EXAMINATION

9 BY MR. SEGAL:

10 Q For the record, you got married since the
11 trial?

12 A Yes.

13 Q Okay. And you're wearing that clothes,
14 you know, because that's your work outfit?

15 A Yes.

16 Q Okay. Having been the victim in this
17 case, you wanted to express some thoughts to the
18 Court about what the appropriate sentence should be
19 and the impact it had on you.

20 A Yes.

21 Q Go ahead.

22 A During this whole trial and well before,
23 for years, I was trying to figure out exactly what
24 did happen to me, to try to put it into some
25 prospective, so that I could reach some personal

1 closure and move on. Some things became quite
2 apparent to me. This was not just a random act
3 where someone broke into my home to steal property
4 or get some personal gain out of it through things
5 of value, this was something that was very specific
6 I was a sport.

7 I was stalked, my house was watched to
8 the point where somebody would even know how to get
9 into it. They would know when I was alone and had
10 no chance of calling out or receiving any aid.
11 This person, Ernesto Behrens, felt so confident
12 about what he was doing that when he ascertained my
13 whereabouts in the apartment and knew that I was
14 asleep, he didn't jump on me and restrained me,
15 instead he sat at my doorway shutting the light
16 until I woke up.

17 He probably, if I didn't wake up with the
18 light, he probably would have made some noise to
19 wake me up and would have enough time to comprehend
20 instead what was happening to me. That's why I say
21 again, it was a sport. The sole intention was for
22 Ernesto Behrens to gain his own personal
23 satisfaction and gratification by me being
24 terrorized. And to that end, I feel very strongly
25 about the fact that he should receive any maximum

1 A No.

2 Q Do you know Ms. Piranti?

3 A Yes, I do.

4 Q Okay. And this person sitting here, I
5 don't think you didn't never identify him as your
6 attacker; is that true?

7 A No, I could not visually identify him as
8 my attacker. I heard his voice today. That's
9 forever stamped.

10 MR. LEWIS: Thank you. Nothing further.

11 THE COURT: Ma'am, you may step down.

12 MR. SEGAL: I would like Ms. Piranti to
13 address the Court.

14 THE COURT: Ms. Piranti is?

15 MR. SEGAL: Victim in the Palm Beach
16 Case.

17 MR. LEWIS: I object to her testifying.

18 THE COURT: Let's identify that. Perhaps
19 we need to address that argument now. Let me
20 hear the State's argument as to why I should
21 receive any testimony from her?

22 MR. SEGAL: I have case law that was
23 discussed in Court before. I cited to the
24 Court. The Jensen case. Let me find it
25 again. Here it is. Jensen versus State, 399

1 Southern Second 1061, Fourth District Court of
2 Appeals case from 1981. The Court in that
3 case held, that follows on page 1064, stated
4 we hold that a trial Court can consider the
5 defendant's prior arrests, not leading to
6 conviction, for purposes of sentencing so long
7 as the Court recognizes that these arrests are
8 not convictions and findings of guilt and the
9 defendant is given an opportunity to explain
10 or offer evidence on the issue of his prior
11 arrests.

12 It then talks about why further persuaded
13 to that view because resentencing investigation
14 report contained a lot of hearsay and a lot of
15 different aspects of the defendant's
16 background as well as educational background,
17 etc. It goes on to say, "In our opinion if a
18 Court can consider a hearsay report of the
19 defendant's social, educational, medical
20 psychiatric and psychological history you
21 should also be able to consider the
22 individual's arrest record so long as it is
23 accurate and an opportunity to explain or
24 otherwise rebutted is given."

25 That case again being from 1981. There's

1 another case, Reese versus State, 639 Southern
2 Second 1067 in which the Fourth District Court
3 of Appeals in that case basically reaffirmed
4 the vitality of Jensen. On page 1068, it
5 says, "This Court has held that a trial Judge
6 may consider other arrests in sentencing
7 hearings if the defendant is given the
8 opportunity to explain or offer evidence on
9 the issues," citing Jensen.

10 Likewise, the presentence investigation
11 report prepared by the Department of
12 Corrections may contain the defendant's prior
13 arrest record. Again, they talk about Jensen.
14 Jensen's logic is still in affect that's what
15 I'm doing with Piranti's case. I'm asking the
16 Court to hear from Ms. Piranti because the
17 Jensen case is later adopted by Reese and
18 again the Court can consider that.

19 Again, the Court can give it whatever
20 weight it wishes to it; disregarding it
21 completely, give it some regard, give it full
22 regard, whatever. That's the Court's
23 decision, but the case law clearly states the
24 Court is allowed to hear these types of things
25 and I asked the Court to hear from Ms. Piranti

1 in that regard because the case law clearly
2 says you can and nothing says that she can't
3 be heard by the Court.

4 THE COURT: Mr. Lewis.

5 MR. LEWIS: Judge, I'm looking at these
6 cases that have been cited and there certainly
7 is some age as to both of them. Do I have any
8 specific cases to overturn Jensen, I don't;
9 however, I think it's a very dangerous pitfall
10 to fall upon where basically they're telling
11 you, "Okay. Don't consider this a conviction.
12 Consider it just as an arrest and give it
13 whatever weight you think is necessary," when
14 both of these prior matters had an opportunity
15 to go through the Court system and in one case
16 the defendant was found not guilty.

17 That was Ms. Ahlidis's case and the other
18 case for whatever reason, the case in Palm
19 Beach, ultimately was dismissed, I believe,
20 because of a speedy trial violation. I
21 believe, there were other significant problems
22 with that case as well that allowed that case
23 to die up there.

24 Now, they're trying to put the burden on
25 us to come forward to show that in fact he was

1 not guilty of that case and I just think that
2 flies in the face of due process and a lot of
3 rights and guarantees of my client's
4 constitutional rights and I'd ask the Court
5 not to hear her testimony and not consider it
6 in any fashion. By doing so, it's almost like
7 opening up, though other trials for
8 reconsideration, and I don't know the possible
9 purpose that would serve anybody here.

10 THE COURT: Anything else on this issue
11 from either of you that you want to present?

12 MR. LEWIS: No, sir.

13 MR. SEGAL: No, Judge.

14 THE COURT: I had an opportunity and in
15 anticipation of this issue coming up and I
16 certainly heard your respective arguments and
17 reviewed the applicable case law. I want the
18 record to be clear on this. I have admitted
19 the prior Court testimony under Mr. Segal's
20 Motion for judicial notice. I think 92.202
21 and 204 would require me to do that.

22 I specifically give that prior Court
23 testimony absolutely no weight or
24 consideration. I'm going to sustain the
25 objection. Do you have any other witnesses

1 you want me to listen to, Mr. Segal?

2 MR. SEGAL: No other witnesses, no.

3 THE COURT: Again, before hearing any
4 argument, I would like to take any testimony
5 right now either one of you has to present.
6 Your end, Mr. Lewis?

7 MR. LEWIS: Yes, sir.

8 MR. SEGAL: Go one step. I don't know if
9 time wise we're doing a combination of things,
10 but I want the prior convictions that were
11 discussed earlier admitted as evidence.

12 THE COURT: I think we can get there in
13 the context of your argument. Let me just
14 conquer any testimony that either one of you
15 wants to present. Mr. Lewis?

16 MR. LEWIS: Yes, Paula Turgeon.

17 THE COURT: Okay. Come up here. Raise
18 your right hand so be sworn in.

19 (Thereupon the witness was
20 sworn in.)

21 THE COURT: Please state your full name
22 for the record?

23 THE WITNESS: My name is Paula Turgeon,
24 T-U-R-G-E-O-N.

25 THE COURT: Go ahead, Mr. Lewis.

DIRECT EXAMINATION

1
2 BY MR. LEWIS:

3 Q Ms. Turgeon, what is it that you would
4 like to tell the Court about Mr. Behrens in terms
5 that affect his sentencing? First of all, you're
6 aware that he's specifically, even if the Judge
7 wanted to give him the lighter sentence under the
8 guidelines, we're talking about a significant
9 amount of 115.8 months. Are you aware of that?

10 A Yes, I am.

11 Q What would you like to tell the Court in
12 order to persuade the Court to give him a lower
13 sentence as opposed to a higher sentence?

14 A First of all, I want to tell the Court
15 that I have hired a private investigator on this
16 case that will come forward in ensuing motions
17 regarding materials that contain exculpatory
18 evidence about Ernesto Behrens. I feel sorry for
19 the women who believe that he did commit this
20 crime. He did not commit this crime. I was with
21 him on the night of this crime. There's no
22 question in my mind till the day I die. I know he
23 did not commit this crime.

24 He is the kindest gentleman. Nicest most
25 giving loving person I ever met in my entire life.

1 Perhaps I could state a couple of examples. First
2 example is his good friend, Magaly Castellano, in
3 the audience, and a good friend of ours and her
4 husband, one time lost his job and they couldn't
5 pay their rent and they were going to be put on the
6 street, Ernesto came forward and gave them the
7 money to save their rent and help them to live.

8 One other incident. In New York one
9 time, and this was kind of a sacrifice for Ernesto,
10 he had bought this brand new leather coat for \$300
11 and we looked everywhere to get the one he wanted,
12 and there was a homeless man in the street and he
13 just gave it to him. He ended walking blocks and
14 blocks away without a coat himself.

15 Every Christmas we take a specific day
16 and go out and buy turkeys and presents for all the
17 homeless people. We give them to the church. I
18 have a very good association with that and good
19 friends with the people that run the church and
20 basically I would like to tell you that he didn't
21 do the crime. I know he didn't do the crime. The
22 DNA was not his and he will one day be exonerated
23 perhaps by doing a test of his own.

24 Q You heard him described in this Court as
25 a sexual predator, someone who terrorizes women for

1 a sport. In any of your connections with him, have
2 you ever seen that side of Mr. Behrens?

3 A No. He has never been violent with me in
4 any way. In fact if we ever had a conversation, he
5 was like the rational one. He would tell me things
6 like, "We both are angry right. I don't want to
7 say anything that I didn't mean to you. I know we
8 will regret anything we say tomorrow. Let's cool
9 off. I'll go home and I'll talk to you about it
10 tomorrow." Things like that. No, he would never
11 ever, under any circumstances, hurt anybody. He's
12 only ever helped people.

13 Q Is there anything else you want to tell
14 the Court about his character or about the facts of
15 the case or about your belief in his innocence.
16 You certainly stated that, but anything you want
17 the Court to know about him as a person and
18 generally the sentencing?

19 A Well, other than his good qualities, I
20 don't know of any bad qualities that he has. He's
21 a college educated person. His mother stayed home
22 to raise him. He has a family. He has a daughter
23 living with his ex-wife in New Jersey. He in very
24 good terms with his ex-wife and he wants to be out
25 as soon as possible so he can do his part in

1 helping with her college education and in raising
2 her and being with her enjoying his life with her.

3 Q Is it fair to say that all his friends
4 and family, that you're aware of, some are in the
5 courtroom today and are in support of Mr. Behrens?

6 A Everybody 100 percent. From the moment
7 he was arrested, everybody knew it was completely
8 ridiculous.

9 MR. LEWIS: Okay. Nothing further.

10 THE COURT: Ms. Segal any questions?

11 MR. SEGAL: No questions.

12 THE COURT: Thank you, Ma'am. Let me ask
13 the other Turgeon to come in. Good afternoon.
14 Raise your right hand, please.

15 (Thereupon the witness was
16 sworn in.)

17 THE COURT: Please have a seat and state
18 your name.

19 THE WITNESS: My name is Ruhmama Turgeon,
20 T-U-R-G-E-O-N.

21 DIRECT EXAMINATION

22 BY MR. LEWIS:

23 Q Ms. Turgeon, how long have you known
24 Mr. Behrens?

25 A Since '89.

1 Q Have you gotten to know him pretty good
2 as a person?

3 A I think very well. He was always a
4 gentleman, helpful, kind to people.

5 Q What would you tell the Judge about him,
6 the person, you think the Judge ought to consider?

7 A I think the Judge could consider a
8 previous case that Mr. Segal is always bringing up.
9 He was new to this country he took a plea bargain
10 and he didn't know that a plea bargain meant you
11 seemed particularly guilty in this country. He
12 didn't understand at all and then he had a poor
13 lawyer, Mr. Levine, and convinced him to plea
14 bargain which he shouldn't have done.

15 He did it thinking, "Well, let's get over
16 with this," and his lawyer probably convinced him
17 to take a plea, which should be taken into
18 consideration people new to this country don't
19 understand exactly what's going on and throughout
20 this whole ordeal of many cases, as Mr. Segal puts
21 it, he's called practically everybody a liar. I
22 question your veracity my dear, sir.

23 THE COURT: Ms. Turgeon, it will be
24 helpful to direct your comments to me. Okay.

25 THE WITNESS: Well, I question his

1 veracity, Judge, I do.

2 BY MR. LEWIS:

3 Q I understand you're upset over the
4 proceedings here?

5 A I'm not upset over the proceedings. I'm
6 upset over the verdict. I think it's a travesty of
7 justice.

8 Q Yes, ma'am. That will be addressed on a
9 different day. Right now I want you to tell me
10 what it is about Mr. Behrens that you think the
11 Judge, who has to sentence him today because that's
12 his job, that he should give him a lighter
13 sentence.

14 A Well, due to all that's been said, I
15 think he should be given a lighter sentence. What
16 more? Do mean his character?

17 Q Yes, ma'am.

18 A I think his character is very good.

19 Q Have you ever seen any violent streaks?

20 A None. He has always been kindly and very
21 gentlemanly. He has good manners and I can't see
22 that any of these women have said they seen him.

23 Q But in terms of him willing to help you
24 or others --

25 A Oh yes, he has done things for me. Like

1 one day I was trying to cut some bushes and he
2 said, "Let me help you."

3 Q During the time that you've known him,
4 have you known him to be employed, to be a hard
5 worker, that type of thing?

6 A Well, I can't testify to that. I don't
7 know about his employment situation.

8 Q But you have never seen anything negative
9 that he's done, for instance, against your daughter
10 or anything of that nature?

11 A No. They were at one time boyfriend and
12 girlfriend. Now they are very good friends.

13 Q Okay. You share the belief in his
14 innocence and --

15 A I do and I worry about the fact that I'm
16 not his mother and it seems to be they consider it
17 prejudicial. I'm trying to alleviate that idea or
18 negate it or whatever you want to call it.

19 MR. LEWIS: Okay. Thank you,
20 Ms. Turgeon. That's all I have, Judge.

21 MR. SEGAL: No questions.

22 THE COURT: Thank you, Ma'am. Next I
23 call Ernesto Behrens.

24 (Thereupon the witness was
25 sworn in.)

1 THE COURT: Put your hand down. Your
2 name for the record.

3 THE WITNESS: Ernesto Behrens,
4 B-E-H-R-E-N-S.

5 DIRECT EXAMINATION

6 BY MR. LEWIS:

7 Q Mr. Behrens, could you please tell the
8 Judge what is that you want to make him aware of in
9 him considering your sentence?

10 A Yes. Very respect, Your Honor, I would
11 like to address to you that I am thankful for the
12 time you have given me especially the evidentiary
13 hearing we went through before and I understand
14 that was 100 percent under your criteria to allow
15 me to do that evidentiary hearing which I find to
16 be good, I mean, necessary.

17 Now, based of this review that I just did
18 on the PSI, I would like first of all I would like
19 to make a little clarification for the record. It
20 is very difficult to be remorse of a crime that a
21 person have not commit. Yes, I'm ashamed of what
22 Ms. Woods went through. I'm ashamed of what I have
23 been living through for the last three and a half
24 years, but it would be unfair for me to feel
25 remorse for a crime I have not committed. I'm a

1 100 percent an innocent man based on the charge,
2 the arrest, the information and the conviction.

3 I would like to bring as an issue, since
4 early on, the credibility of Mr. Dennis Segal and
5 the information that I filed against him with the
6 Florida Bar Association. Even when I am a lay man,
7 I commit mistakes. I recognized the mistake. I
8 deny the mistake. It was based on credibility. I
9 would like to give some credibility as to Mr. Segal
10 filing of the original information of this case
11 right here when a man with 22 years of experience
12 as a sexual battery assault head department center,
13 whatever you call that, commits perjury during an
14 official proceeding by charging this defendant of a
15 crime that never took place, and the Honorable
16 Judge Horowitz heard the testimony of Ms. Woods
17 about a an anal penetration, by the perpetrator of
18 this victim that never took place.

19 At one point, Judge, I tried to do what
20 the law allowed me. I was representing myself and
21 I filed numbers of motions, Motion to Dismiss the
22 entire information based on the fact that Mr. Segal
23 have committed perjury. I filed a Motion to
24 Disqualify Mr. Dennis Segal based on the clear
25 dislike we have for each other and I thought at

1 that point that was actually a conflict of interest
2 for Mr. Segal to keep representing the State on
3 behalf of the state on my case. Anyway, all those
4 motions were actually denied.

5 Furthermore, I what I went through the
6 trial. Today I actually understand very
7 respectfully that the Honorable Judge is sometimes
8 during the trial apparently misunderstood something
9 very important, which was the importance of the
10 oral swabs it this whole case. I can understand
11 that you are human being like everybody here, but I
12 will raise that point. It is very important.

13 In this case there was no evidence. No
14 evidence other than the result of an alleged oral
15 swab which allegedly belonged to this defendant ad
16 into a crime scene. It was never proved by the
17 State nor by Mr. Dennis Segal even when my DNA
18 expert, Dr. Lesley Liverman, begged this prosecutor
19 to please take a blood test of myself to go
20 further. Not to count -- how do you call it? Not
21 to count on those oral swabs that were so
22 contradicted. That's the only word I can find, but
23 Mr. Segal did not do a test in that case.

24 Furthermore, we found out all the cases,
25 as a matter of fact, all the cases were sent to

1 Palm Beach to do PCR test on DNA which is the
2 newest test ever invented. Now, we have proved
3 that the DNA test, another test saying it was
4 positive, is actually exculpatory. It was never
5 produced by Mr. Dennis Segal.

6 Furthermore during the trial and that was
7 my specific point, at this point it was a major
8 violation of due process of law for this defendant
9 under the 14th Amendment that I refer as to the
10 false testimony given during trial about the very
11 only single piece of evidence that could ever link
12 me with this from Detective Moore.

13 Furthermore, another misconduct from
14 Mr. Segal, the prosecutor, by accepting such false
15 deceitful and misleading testimony and furthermore
16 from accepting and allowing the very single only
17 piece of testimony that the jury asked during the
18 deliberation to read on knowing that was false.
19 That was not true. It was misleading so yes, Your
20 Honor, I'm very I feel raped if that is the right
21 word to use in this case by the system, by this
22 system. Not by the Honorable Judge, not by the
23 way -- none of these people that was here at the
24 time, but by the proceedings and how things have
25 been developing.

1 It's very clear I asked the Judge
2 respectfully to seat the seven jurors and try to
3 weigh the evidence and there's a very good case I
4 read called Hart versus State, a 1994 case, where
5 it's very clear and it says that when the Honorable
6 Judge is put in a position by the defendant to seat
7 the seven jurors and the Honorable Judge at this
8 point understands and finds the evidence, false
9 testimony, having been given through the
10 evidentiary hearing, in this case through the
11 trial, he must put more weight into granting the
12 new evidence.

13 Now, the reason I came forward I don't
14 mean to lose focus, I'm saying that, Your Honor, we
15 have to prove right now, post trial on that
16 unfortunately that there were two testimony. One
17 testimony have to be a lie. Two testimony come
18 from Miami. Two people employed by the same
19 officer and both were in conflicting answers. One
20 person saying it's two oral swabs and another one
21 saying four oral swabs.

22 Your Honor, we could not during the trial
23 raise a point of impeachment whatsoever because we
24 didn't know who was lying. We were lied to as Your
25 Honor Judge was lied and also the seven jurors

1 decided they were lying. We didn't know what was
2 the truth until post trial. After this trial was
3 ended, we went to further investigation and now we
4 find out that, yes, in reality there were four oral
5 swabs.

6 The face value of these facts from Miami
7 are that there are four. Again, I repeat again
8 there was no whatsoever any type of evidence. The
9 only evidence that was taking into consideration
10 besides the being unreliable and now we know it's
11 supported by a false testimony. Besides that also,
12 there was no properly chain of custody nor the
13 proper custodians and furthermore, Your Honor, it
14 was never -- the burden was changed to the
15 prosecutor to produce beyond a reasonable doubt, to
16 prove that tempering did not occur with that
17 evidence and it was not produced either.

18 Based on this, Your Honor, I'm trying to
19 say I just heard the testimony from Ms. Woods. You
20 know, Ms. Woods, I really tell you something. I
21 am -- feel bad for what you have been through as a
22 woman, as a human being, but you have to understand
23 very clearly that five and a half years you can't
24 now say because you heard my voice, you recognize
25 me as the person that was talking to you and --

1 MR. SEGAL: Judge, please tell
2 Mr. Behrens to talk to the Court and not to
3 Ms. Woods.

4 THE COURT: Direct your talk to me.

5 BY MR. LEWIS:

6 Q Go ahead, Mr. Behrens.

7 A I have to say that I find out a little
8 bit by Ms. Woods because she was not able to
9 identify a penis that was put through her mouth
10 that actually circumcised, which this defendant
11 again is not circumcised and oral sex was involved
12 in this case. A believable description, but she
13 failed to do that. The description she failed to
14 do; the height, age. She said she couldn't see,
15 but it is a little bit misleading when five years
16 later even when she contradicted herself now by
17 saying that the person had a slight Spanish accent,
18 which I don't have, I have a very bad accent.

19 By the way, excuse me having a bad
20 accent. I don't speak any different, so other than
21 that, I'm going rephrase this. I am ashamed but I
22 am not remorse. I have no remorse of the crime
23 that was committed. I have the shame of what has
24 happened to her and the victims and what they have
25 been through in their life. Respectfully, Your

1 Honor, I am going to ask to please take this into
2 consideration. The trial itself, if you could, be
3 merciful when you sentence me. I would
4 respectfully appreciate it and that's pretty much
5 all I can say. I appreciate you again for your
6 time and your kindness and appropriate the judicial
7 system for allowing me to represent myself many
8 times or whatever and thank you for letting me
9 bring these issue up. There were major violations
10 of the constitutional 14th Amendment of this
11 defendant through the trial. Thank you.

12 THE COURT: Mr. Lewis, anything further
13 from this witness?

14 MR. LEWIS: No, Your Honor.

15 THE COURT: Mr. Segal?

16 MR. SEGAL: No.

17 MR. LEWIS: That's all the testimony I
18 have, Judge. I have argument now.

19 THE COURT: Let me hear from the State
20 first and then we'll get back to the defense
21 and argument.

22 MR. SEGAL: First I can go through the
23 Motion for Upward Departure from the
24 sentencing guidelines. I think there's three
25 separate grounds which would allow the Court

1 to upward depart in this case. I would asked
2 the Court to strongly do so. The first one is
3 based upon the defendant's 1992 conviction for
4 two counts of arm burglary, two counts of
5 grand theft, possession of burglary tools and
6 possession of burglary tools.

7 I've got back convictions here for --

8 THE COURT: They're reflected in the PSI.

9 MR. SEGAL: I am submitting it with the
10 fingerprints.

11 THE COURT: Any objection Mr. Lewis?

12 MR. LEWIS: No.

13 THE COURT: They will be admitted into
14 evidence without objection.

15 MR. SEGAL: Your Honor, the two counts of
16 armed burglary, before he was convicted, are
17 level eight offenses under the sentencing
18 guidelines according to Florida Statute
19 921.0016 sub three, sub R1995 which I have for
20 the Court. That section says one of the
21 reasons for upward departure is that the
22 primary offense scored a level seven or
23 higher. The defendant is convicted of one or
24 more offenses that scored or would have scored
25 an offense level eight or higher.

1 The conviction in this case was a level
2 ten offense. That part is met. The armed
3 sexual battery is a level ten offense. The
4 armed burglaries are again level eight
5 offenses, which under that particular
6 subsection Florida Statute 921.0016 sub three
7 sub R, constitutes a statutory ground for
8 upward departure. I would ask the Court to
9 upper depart based on that but not for
10 anything else.

11 Additionally, I gave the Court the cases
12 of Smith versus State, 515 Southern Second
13 182. Freeman versus State, 663 Southern
14 Second 675 Fourth District. Those cases both
15 hold that unscored convictions are valid basis
16 for upward departure. The convictions in Las
17 Vegas and in Palm Beach County that were
18 discussed before, a copy which I have here.

19 THE COURT: Any objection, Mr. Lewis?

20 MR. LEWIS: No.

21 THE COURT: They will be admitted without
22 objection.

23 MR. SEGAL: They are unscored priors
24 convictions because they occurred subsequent
25 to the crime in this case so they can't be

1 scored as priors and I'd ask the Court based
2 on Smith and Freeman, that those are valid
3 grounds for upperly departing. There are two
4 separate reasons to upward depart.

5 The final reason is based on Margot
6 versus State. I provided the Court with it.
7 This is a Florida Supreme Court case that
8 stands for the proposition that heightened
9 premeditation or calculation over what's
10 inherit in the offense, is a valid reason for
11 upward departure. Specifically Margot refer
12 another case, State versus Obojes,
13 O-B-O-J-E-S, 604 Southern Second 474, which
14 held and stated the heightened premeditation
15 or calculation is sufficient reason for
16 departure in a sexual battery case which low
17 and behold we have here.

18 I think Ms. Woods touched on the
19 heightened premeditation that existed in this
20 case. Look at what the defendant did in this
21 case. He goes to this apartment complex far
22 away from where he lives in the early morning
23 hours when it's dark and likely not observed
24 by other people in the area. He goes into the
25 apartment complex during the early morning

1 hours secluded when nobody else was around and
2 he had a weapon with him. He had a sharp
3 object, a knife, with him and Mr. Woods
4 testified about that.

5 He was able the pick out and identify a
6 woman who was living alone in the apartment.
7 She had nobody else she could turn to for
8 help, call for help. He clearly spotted that
9 out ahead of time. He broke into the
10 apartment using his burglary skills, which we
11 know he has from his criminal history.

12 Ms. Woods was asleep. He took him time
13 and effort to be able to unlock the window.
14 All the testimony was he was able to break
15 into this window during the early morning
16 hours to get in. There were dirt tracks, if
17 the Court recalls the testimony, throughout
18 the house. There were dirt tracks that went
19 to the various rooms in the first level and
20 another bedroom in the second level, which
21 indicates that the defendant, once he broke
22 in, checked out the various rooms in the house
23 to make sure that there was nobody else there.

24 Again, more evidence of heightened
25 premeditation. He went from room to room to

1 room to make sure nobody else was in there
2 before he confronted and assaulted Ms. Woods.
3 When he finally appears at her room, the Court
4 recalls the testimony, he shot a light in her
5 face to wake her up and started asking her
6 where her friend was.

7 Again, the defendant either was trying to
8 make sure there was nobody else there or
9 somehow confused Ms. Woods into believing that
10 this was the person that knew her or had a
11 right to be there. Some explanation for being
12 there. One other reason again part of
13 heightened premeditation. Then almost
14 immediately after waking her, he had her cover
15 her face.

16 Again, thought through to make sure that
17 she didn't have any further better ability to
18 identify him and cover her face immediately.
19 Then he sexually assaulted her, and the Court
20 will recall her testimony, and left quickly.
21 Again, Ms. Woods touched upon or elaborated
22 upon nothing was taken in this burglary.
23 Nothing was taken at all. Most burglaries
24 when people break into a house to steal
25 something, they take something from them for

1 whatever reason and maybe a sexual battery, a
2 crime of opportunity once you're in there and
3 you find a person there. There was nothing
4 taken.

5 There is no indication that this was done
6 for any reason whatsoever other than to
7 sexually assault this poor defenseless
8 sleeping woman who was there. Put all these
9 factors together, Your Honor, it's a clear,
10 patently clear case of heightened
11 premeditation and calculation that would be a
12 valid reason for upward departure in a sexual
13 battery case.

14 I would ask the Court to either
15 considering just any one of those things, all
16 those things together or two of those things.
17 Those are all valid reasons for upward
18 departure. I think this case on it's merits
19 deserves upward departure. We are here to
20 sentence somebody and to do justice for crimes
21 that were committed and the person who
22 committed them.

23 These crimes are severe egregious and
24 vile. A person breaking into someone's house
25 in the early morning hours in the dead of

1 night with, I guess, expected to be in the
2 most secured place they could be, in a locked
3 up house and sexually assault her. For a
4 woman, except for maybe hurting her severely
5 or worst killing her, there is not much worst
6 you can do to a woman. Other than breaking
7 into their house and sexually being assault by
8 a total stranger.

9 Look at the situation Ms. Woods was in at
10 the time this occurred. She had worked, she
11 testified, an extremely long day. She was
12 tense because of her work situation. She was
13 due to get up in a couple of hours and get
14 back to work in the early morning. She was
15 home with a couple of hours of sleep for next
16 day. This is when he comes in and does this
17 stuff to her, this vile egregious offensive
18 crimes against her.

19 What did these crimes involve? The
20 destruction of whatever security she may have
21 felt living in her home at the time locked up.
22 He destroyed her ability to ever be confident
23 and comfortable in the security and privacy of
24 her own home knowing that people like the
25 defendant can come there at time and do the

1 outrageous and egregious vile things to her.
2 Again, the sexual assault committed against
3 her is the ultimate invasion of her personal
4 privacy and her body.

5 Again, this would be a lingering fear
6 that would exist about what could happen to
7 her any time in her life because of things
8 like this. Look at the person that did this.
9 This person, just from the PSI, says he was
10 first arrested for burglary in 1987. The PSI
11 indicates numerous burglary arrests. He was
12 convicted and arrested in 1990. Convicted in
13 1992. There are two counts of armed burglary,
14 two counts of grand theft, possession of
15 burglary tools and two separate burglaries
16 that occurred in Pompano Beach.

17 This case occurred in 1995, another
18 burglary. In 1995 he stole jewelry from
19 another couple in Palm Beach County. In 1996,
20 he broke into and sexually assaulted Kathy
21 Piranti. In 1997, he flees from Broward
22 County and the police are looking for him and
23 he's arrested in Las Vegas for a burglary
24 there. When he is arrested for the burglary
25 there, he's in possession of false

1 identification, a false social security card
2 and falsely identified himself as a person by
3 the name of Roberto Torres to the police.

4 The defendant is a professional long term
5 criminal breaking into folks houses in various
6 locations throughout the country for an
7 extended period of time. He's guilty of
8 crimes in three separate jurisdictions. Two
9 of these involve armed burglaries with people
10 in their homes. You can't instill more fear
11 in a person than an arm burglary done where
12 they live in their home where they find their
13 privacy and security.

14 In Broward and Palm Beach County, he
15 actually assaulted women while armed while
16 committing these burglaries. He's done this
17 at least twice. As the Court knows about it
18 again has to discount the Palm Beach
19 situation, but he's done it at least twice. I
20 think a person who has done these repeated
21 burglaries and repeated sexual batteries
22 clearly is going to do it again if he is
23 released. To release him at any point in the
24 future, is to subject women, wherever he lives
25 to what he may do to them.

1 Certainly that pertains to home owners,
2 people who live in apartments or people who
3 have any kind of residences to him repeatedly
4 arm burglarizing them in their residences. I
5 would ask the Court to impose all logical and
6 rational sentence that would ensure that these
7 kinds of crimes are never committed again and
8 to give the appropriate punishment for the
9 vile egregious and horrible crimes committed
10 against Denise Wood.

11 The Court clearly understands what
12 Ms. Woods eloquently expressed and what it was
13 for her. I think the only valid sentence in
14 that regard is punish him for what he did and
15 make sure this stuff doesn't happen again and
16 sentence him to life in prison and upper
17 depart which what this Court can legally do.

18 I think otherwise, is to ignore the
19 likelihood that he's going to harm somebody
20 else in the same way he harmed Ms. Woods maybe
21 up it a little bit more and a little more
22 because, you know, for whatever reason he gets
23 bored or he wants to make sure there is no
24 witness to testify against him in the future.
25 I asked the Court to do what it takes to

1 safeguard the community a to punish him for
2 this horrible crime that he committed.

3 THE COURT: Thank you. Mr. Lewis.

4 MR. LEWIS: While the issue today is not
5 the innocence or the guilt of the defendant, I
6 think it is clear that this defendant is
7 continuing to maintain his innocence. That
8 everyone who knows him, all the people that
9 took the time to write the Court letters, also
10 believe in him, believe in his innocence.

11 You can even discount the family and
12 friends and you can look at the letters.
13 There's a letter in there from -- I just had
14 an opportunity to see it. I haven't been able
15 to see it before today, from Dr. Guy Durant.
16 I think he more than anyone goes through what
17 Mr. Behrens has been through and steadfastly
18 believes Mr. Behrens is incapable of these
19 types of acts that have been talked about and
20 certainly here in this trial.

21 I know Mr. Behrens and myself, both of
22 us, are sorry for the grief that the victim
23 had to go through in this particular case to
24 the extend that they feel or they know who
25 this person is and they are certainly entitled

1 do their feelings and positions. The
2 evidence, I think, to some extent has spoken
3 and will speak to those issues in the future.

4 I don't think there is any lawful reason
5 that is cited by the State for upward
6 departure. Looking at the Freeman case, I
7 think the prosecutor mentioned Freeman V
8 State, 663 Southern Second 675, clearly states
9 in that case, and yes it was a first degree
10 murder case, but the heightened premeditation
11 could not be used in the place of the
12 departure sentence.

13 There is a lot of speculation here as to
14 this crime was somehow more calculated than
15 the average sexual battery. I don't think
16 there has been any proof of that, I think,
17 that the guidelines take into consideration,
18 the extend of the crime, the horribleness of
19 the crime, take into extent the defendant's
20 prior criminal record.

21 I'm asking the Court not to consider
22 specifically the allegations in Ms. Ahlidis
23 case and Ms. Piranti case because they
24 certainly have no place in these proceedings
25 and they are equally if not more -- I have to

1 say in terms of why this defendant was charged
2 in this particular case, there are some real
3 good reasons. Some real good reason why.

4 If you look at the evidence of this case,
5 what happened in terms of the DNA testing, to
6 give one real serious reason to be very
7 pensive about our system and how the evidence
8 is handled and how it goes from agency to
9 agency and from lab to lab and the
10 opportunities that might exist for someone who
11 maybe have something personal against
12 Mr. Behrens to manufacture evidence against
13 him.

14 While we have no specific proof at this
15 point in time, I think that there are some
16 very unusual questions that have to be
17 considered as to the veracity of this
18 evidence. I'm asking the Court to sentence
19 him to the bottom of the guidelines range. I
20 have heard or seen nothing that can legally
21 support the issue for departure.

22 I asked the Court to consider the
23 testimony of both Ms. Turgeons and many people
24 who took the time to write Your Honor telling
25 him about the very good things that

1 Mr. Behrens has done in his life and consider
2 all that and access an appreciate sentence.

3 THE COURT: Thank you, Mr. Lewis. Okay.
4 I had an opportunity to listen to your
5 respective arguments and to previously read
6 the case law applicable to the issue of
7 sentencing. First let me address the Motion
8 for Upward Departure. The record is clear and
9 has been admitted into evidence that
10 Mr. Behrens was previously convicted of two
11 counts of armed burglary. Looks like the
12 convictions were back in May of '92. As well
13 as a possession of burglary tools but in
14 particular the two counts of armed burglary
15 which were level eight offenses.

16 In the charges that he was found guilty
17 of in this case, being the burglary with a
18 battery and the armed sexual battery,
19 certainly the armed sexual battery is a level
20 ten offense. What is the level of the
21 burglary battery? Is that a ten also? I
22 think, it's a life felony.

23 MR. SEGAL: It's a level eight, Your
24 Honor.

25 THE COURT: Okay. In any event, the

1 armed sexual battery is a level ten. I do,
2 based on this, feel there is a lawful basis
3 for upward departure consistent with
4 921.0016(3)(R) and accordingly I'm going to
5 grant the State's motion relative to an upward
6 departure based solely on the '92 conviction
7 for armed burglary being a level eight
8 offense.

9 I think, as I consistently said regarding
10 the issue of sentencing as it relates to this
11 case, and I want the record to be again clear,
12 the Court gives absolutely no weight to what's
13 referenced as the Ahlidis case or the Piranti
14 case if that is the correct pronunciation. I
15 remember the facts of the case. I remember
16 the trial and I understand Mr. Behrens's
17 position as to why in his mind he shows no
18 remorse because he believes his innocent of
19 the crime charged.

20 Nonetheless the jury, the system, if you
21 will, found him to be guilty beyond a
22 reasonable doubt. Without a doubt,
23 Mr. Behrens, the Court does believe that you
24 did terrorized Ms. Woods. I think there's
25 probably a lasting scar that's been left. I

1 think that Ms. Woods probably a day will not
2 go by when she's going to at some point
3 through each day reflect upon the circumstance
4 that occurred and just the hideous ugly nature
5 of the crime committed on upon her.

6 I taken into account also as reflected in
7 the PSI that when he was brought into custody
8 out in Las Vegas, I found it interesting that
9 you took on a new identity in the name of
10 Robert Torres, Roberto Torres. At that point,
11 according to PSI, there was no reason other
12 than you had been arrested wrongly. Be it as
13 it may, you took care of the matter out in Las
14 Vegas, I think that was pled out to one or two
15 misdemeanors as I recall, but more than the
16 actual plea of the misdemeanors, I think the
17 fact that you took on a new identify, is a
18 meaningful thing to the Court.

19 With respect to the armed burglaries back
20 in 1992, these occurred, according to the PSI,
21 out in a Palm Beach community. They were
22 residential, you know, I think every time
23 there's a burglary of a residence, there's an
24 opportunity for a homicide waiting to occur.
25 Whether it's an intentional homicide or

1 whether it's somebody discovering somebody in
2 their house and having a heart attack, you
3 know, those things can occur and you elected
4 to disregard that apparently in your conduct.

5 Okay. Accordingly as I said, I'm going
6 to upperly depart from the guidelines. I'm
7 going to adjudicate you guilty on both counts
8 of the armed sexual battery and burglary with
9 a battery. I'm concerned about separate
10 sentencing on those counts as it relates to
11 the issue of double jeopardy which really
12 haven't be addressed, but I've got them in
13 mind. Any sentence that I do now is going to
14 be concurrent sentences on both counts.

15 I'm going to sentence you to life in
16 prison to run concurrent on both counts. You
17 have thirty days from today's date within
18 which to appeal the legal perimeters to this
19 sentence. If you cannot afford a lawyer, one
20 will be appointed for you. I don't know,
21 Mr. Lewis, whether you are being retained
22 privately for any appellate issues that
23 Mr. Behrens may have.

24 MR. LEWIS: I'm not, Judge.

25 THE COURT: I will certainly inquire as

1 to indigency. I will access as related to the
2 representation of Mr. Terrell and
3 Ms. Shelowitz a public defender's lien and
4 Court cost of \$305. You're to have no contact
5 at all, Mr. Behrens, with Denise Arsenault or
6 any member of her family.

7 MR. SEGAL: I think Mr. Terrell was
8 privately retained as well.

9 THE COURT: I don't know the answer to
10 that to be honest. If he was, obviously it
11 becomes mute as to any P.D. lien. I believe
12 that under 775.21(4)(a)(1), I think the Court
13 would be required to declare Mr. Behrens as a
14 sexual predator.

15 MR. SEGAL: I have it here.

16 THE COURT: Have you shown it to
17 Mr. Lewis?

18 MR. SEGAL: It was printed out with an
19 October date and Mr. Terrell's name is still
20 on there.

21 MR. LEWIS: I don't object to the form of
22 the order, Judge. I object to the Court
23 finding him as a sexual predator.

24 THE COURT: I understand that and our
25 objection is noted on the record. I'm

1 looking, you know, 775.21(4)(a)(1) and there's
2 certain time periods that the Statute speaks
3 to and we're dealing with an offense between
4 October 1, 1993 and before October 1, 1995. I
5 believe, this was May of '95 and it says an
6 offender found by the Court under former
7 775.22 or 775.3, I believe, that's the
8 provision that we operate under. If I'm
9 misreading the Statute, please I invite you to
10 correct me on either end.

11 MR. SEGAL: It's always been that the
12 Court looks at the various permutations of the
13 sexual predator's statute that anybody
14 convicted of an armed sexual battery, that's a
15 life felony is under sexual predator if it's
16 committed on or after October 1 of 1993.

17 THE COURT: Again, I'm comfortable in the
18 substance of that aspect of the sentence, so
19 Mr. Behrens, consistent with that statute,
20 you're being declared a sexual predator.

21 Mr. Behrens, are you in the position to
22 hire your own lawyer for appellate purposes?
23 You're under oath, Mr. Behrens, I am reminding
24 you of that. Do you have the money to hire
25 your own lawyer for appellate purposes?

1 MR. BEHRENS: I don't have any money.
2 After this, I might have to communicate with
3 family and my friends to see if they will be
4 welcomed to appoint me one. At this point, I
5 have no money.

6 THE COURT: Do you have any bank
7 accounts, savings accounts?

8 MR. BEHRENS: No.

9 THE COURT: Any stocks, bonds, real
10 estate?

11 MR. BEHRENS: Nothing.

12 THE COURT: Is there anybody that you
13 know that owes you money that payments for
14 which you expect to receive in the near
15 future?

16 MR. BEHRENS: No, sir.

17 THE COURT: Do you own any assets that
18 you're aware of that can readily be sold or
19 reduced to cash?

20 MR. BEHRENS: I don't have anything.

21 THE COURT: I'm accordingly going to
22 appoint the public defender's office to
23 represent you for your appellate purposes. I
24 believe there's an order. I think, it's not
25 the 15th Circuit Court's PD's office that does

1 the appeals?

2 MR. LEWIS: Yes.

3 THE COURT: What I'm going to do
4 Mr. Behrens is I'm going to contact the public
5 defender's office here and they will present
6 to me -- I know there's a specific order that
7 they use and I'll have them present that to me
8 to appoint the public defender to represent
9 you. Karen, you need to call them and have a
10 PD here by tomorrow morning. Make sure this
11 is done timely. Let's take a look at that.

12 MR. SEGAL: For the record, here's the
13 score sheet. We have prepared a short order
14 pertaining to the upward departure.

15 THE COURT: What is your respective
16 positions as to whether or not under these
17 crimes Mr. Behrens was convicted of, whether
18 he would or would not be eligible for parole
19 or whether that's a sentencing option that the
20 Court has?

21 MR. SEGAL: I think, there is no parole
22 prior to this.

23 THE COURT: Then Mr. Behrens would not be
24 eligible for parole with this sentence and all
25 be it he has 957 days in, according to my

1 calculations, that's a mute issue. Have you
2 had a chance to see this, Mr. Lewis?

3 MR. LEWIS: Yes, Judge. The time that he
4 is getting, and again at this point it's
5 really a mute issue, I think it should be
6 calculated from the point in time when he was
7 detained in Las Vegas, which is a longer
8 period of time.

9 MR. SEGAL: Judge, I would disagree with
10 that. The Court will recall that during the
11 course of the trial, the argument was that he
12 wasn't arrested until he got back here in like
13 March or April of '98. I think, he was being
14 held in Las Vegas for a Las Vegas charge for
15 which he was being detained.

16 THE COURT: I know there's a law right on
17 this question. Let me suggest the following.
18 Right now the sentence is life without the
19 possibility of parole. Certainly either of
20 you, and I would encourage you, to present any
21 case law that you want on whether he would be
22 entitled to the credit for the time while he
23 was at Las Vegas.

24 Right now I show 957 days in here. If
25 that's an incorrect number, then I would

1 invite either of you to set it down for a
2 hearing and present me the case law. I know
3 there's law on that question. I don't know
4 the answer to that right now to be very
5 candid.

6 MR. LEWIS: The only other issue I would
7 request to the Court is that in about a
8 two-week period, set down an evidence hearing
9 having to do with the newly discovered
10 evidence. I'm asking it to be in that time
11 period because I will take it upon myself to
12 file this Notice of Appeal and all the
13 paperwork needed for his appeal.

14 I will need to have that heard prior to
15 the filing of the Notice of Appeal, so I would
16 be requesting, to be on the safe side, at
17 least an hour and maybe a little more for the
18 purpose of this hearing. I would also ask
19 that the Court enter an order to direct BSO to
20 maintain Mr. Behrens here in the jail in
21 Broward County Jail pending that hearing.

22 THE COURT: Let me see where I am. Right
23 now, what I can do is I can, in my mind, set
24 aside an hour and a half time on December 1st.
25 Unfortunately Thanksgiving week intervenes and

1 sort of kills the clock in that regard, but I
2 can set aside an hour and a half on
3 December 1st fir any pending motions that may
4 be out there.

5 If you want to submit an order that
6 Mr. Behrens remain here in the Broward County
7 jail until pending motions are resolved at
8 least through December 1st, I have no problem
9 with that.

10 MR. LEWIS: Yes. That would be fine.

11 THE COURT: I still need to get a PD here
12 tomorrow. I want an order appointing them.

13 MR. LEWIS: That will be at 9:00 o'clock
14 on the first?

15 THE COURT: Actually, let's say 10:30. I
16 will be having motion calendar ahead of time.

17 MR. LEWIS: Okay.

18 THE COURT: Anything else we have to
19 address, Mr. Segal?

20 MR. SEGAL: No, Your Honor.

21 THE COURT: Mr. Lewis?

22 MR. LEWIS: No, sir.

23 (Thereupon end of hearing.)
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C E R T I F I C A T E O F R E P O R T E R

I, ERLINDA RODRIGUEZ, COURT REPORTER,
CERTIFY THAT I WAS AUTHORIZED TO AND DID
STENOGRAPHICALLY REPORT THE FOREGOING HEARING; AND
THAT THE TRANSCRIPT IS A TRUE RECORD OF THE
TESTIMONY GIVEN. I FURTHER CERTIFY THAT I AM NOT A
RELATIVE, EMPLOYEE, ATTORNEY, OR COUNSEL OF ANY OF
THE PARTIES NOR AM I A RELATIVE OR EMPLOYEE OF ANY
OF THE PARTIES' ATTORNEY OR COUNSEL CONNECTED WITH
THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE
ACTION. DATED THIS 28TH DAY OF FEBRUARY, 2001.

Erlinda S. Rodriguez
ERLINDA RODRIGUEZ, COURT REPORTER

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

AMENDED
INFORMATION FOR

vs.

ERNESTO BEHRENS

I. - SEXUAL BATTERY-ARMED
II. - BURGLARY OF A DWELLING
WITH A BATTERY

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through the undersigned Assistant State Attorney, charges that ERNESTO BEHRENS

on the 12th day of May, A.D. 1995, in the County and State aforesaid, did commit Sexual Battery upon Denise Wood, a person twelve (12) years of age or older, without her consent by causing his sexual organ to penetrate or unite with the mouth and/or tongue of Denise Wood, and in the process thereof ERNESTO BEHRENS used or threatened to use a deadly weapon, to-wit: a knife or other sharp object, contrary to F.S. 794.011(3).

COUNT II

MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through the undersigned Assistant State Attorney, charges that ERNESTO BEHRENS

on the 12th day of May, A.D. 1995, in the County and State aforesaid, did unlawfully, enter or remain in a structure, to-wit: a dwelling, or the curtilage thereof, located at 750 N.W. 91st Terrace, Plantation, Florida, property of Denise Wood, with the intent to commit the offense of Sexual Battery therein, and in the course thereof did commit a Battery upon Denise Wood by actually and intentionally touching or striking Denise Wood against the will of Denise Wood, contrary to F.S. 810.02(2)

COUNTY OF BROWARD
STATE OF FLORIDA

Personally appeared before me DENNIS SIEGEL, duly appointed as an Assistant State Attorney of the 17th Judicial Circuit of Florida by MICHAEL J. SATZ, State Attorney of said Circuit and Prosecuting Attorney for the State of Florida in the County of Broward, who being first duly sworn, certifies and says that testimony has been received under oath from the material witness or witnesses for the offense(s), and the allegations as set forth in the foregoing Information would constitute the offense(s) charged, and that this prosecution is instituted in good faith.

Dennis Siegel
Assistant State Attorney, 17th Judicial Circuit of Florida

SWORN TO AND SUBSCRIBED before me this 15th day of June, A.D. 1999

ROBERT E. LOCKWOOD
Clerk of the Circuit Court, 17th Judicial Circuit,
Broward County, Florida

By Dennis D. Clark
Deputy Clerk

To the within Information, Defendant pleaded not guilty 4/3/98

ROBERT E. LOCKWOOD
Clerk of the Circuit Court, 17th Judicial Circuit,
Broward County, Florida

By David Haynes
Deputy Clerk

DS:emb 06-15-05 ds

Filed in Clerk Court
ROBERT E. LOCKWOOD
CLERK
ON 6/11/99
BY [Signature]

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10 (A)

JUDGE: Alfred J. Horowitz

STATE OF FLORIDA, :

Plaintiff, :

vs. :

VERDICT

ERNESTO BEHRENS, :

Defendant. :

COUNT I

WE, THE JURY, find as follows as to the Defendant in this case: (Check only one)

A. The Defendant is Guilty of Sexual Battery-Armed, as charged in the Information.

B. The Defendant is Not Guilty.

SO SAY WE ALL, this 14 day of September, A.D. 2000, at Fort Lauderdale,
Broward County, Florida.

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON 9/14

BY H. Wayne

[Signature]
FOREPERSON

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10 (A)

JUDGE: Alfred J. Horowitz

STATE OF FLORIDA, :
Plaintiff, :

vs. : VERDICT

ERNESTO BEHRENS, :
Defendant. :

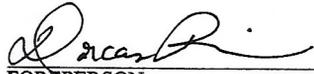
COUNT II

WE, THE JURY, find as follows as to the Defendant in this case: (Check only one)

A. The Defendant is Guilty of Burglary of a Dwelling with a Battery, as charged in the Information.

B. The Defendant is Not Guilty.

SO SAY WE ALL, this 14 day of September, A.D. 2000, at Fort Lauderdale,
Broward County, Florida.


FOREPERSON

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
On: 9/14/00
By: A. Payne

17th Judicial Circuit in and for Broward County
 In the County Court in and for Broward County

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON NOV 13 2000

BY J. Wayne

DIVISION:

- Criminal
 Traffic
 Other

ORDER

THE STATE OF FLORIDA VS.

Ernesto Behrens

DEFENDANT

CASE NUMBER

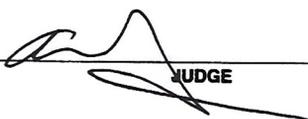
98-5739 CF 10 A

CHARGE

The State of Florida's Motion To Impose Sentence Which Is Upward Departure From Recommended Guideline Sentence is granted and the Court will impose an upward departure sentence. The Court finds that the Defendant has been convicted on May 14, 1992, in case number 90-1320 CF 10 A of two counts of Armed Burglary, level 8 offenses under the Florida sentencing guidelines, and in this case was convicted of Sexual Battery - Armed, a level 10 offense. Pursuant to F.S. 921.0016(3)(r) (1995), this is a valid ground for an upward departure.

DONE AND ORDERED THIS 13th DAY OF November, 2000, IN

BROWARD COUNTY, FLORIDA.



JUDGE

COPIES: BSO - SAO

253

DIVISION:
CRIMINAL

DIVISION: FP

Judgement

THE STATE OF FLORIDA VS.

CASE NUMBER

DEFENDANT Ernesto Behrens 98 5739 CF 1214

Probation Violator

State Attorney Dennis Segal

Court Reporter Erlinda Rodriguez

The Defendant, Ernesto Behrens being personally before this Court represented by JAMES LEWIS, his attorney of record, and having:

(Check applicable provision)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	ADD'L MONIES IMPOSED
<u>I</u>	<u>Armed Sexual Battery</u>	<u>794.0113</u>	<u>Life</u>	
<u>II</u>	<u>Burglary with Battery</u>	<u>810.022</u>	<u>1F</u>	

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of Fifty Dollars (\$50.00) pursuant to F.S. 960.20 (Crimes Comp. Trust Fund). The Defendant is further ordered to pay the sum of Five Dollars (\$5.00) as court costs pursuant to F.S. 943.25(4). Fines imposed as part of a sentence pursuant to F.S. 777.083 are to be recorded on the Sentence page(s).

(Check if applicable)

Stayed & Withheld The court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation for a period of _____ under the supervision of the Department of Corrections (conditions of probation set forth in a separate order)

Sentence Deferred Until Later Date The Court hereby defers imposition of sentence until _____ (Date)

Pay \$200.00 Trust Fund pursuant to F.S. 27.3455

Count(s) _____ : _____ DAYS/MONTHS BROWARD COUNTY JAIL W/CREDIT _____ DAYS TIME SERVED.

The Defendant in open court was advised of his right to appeal from this Judgement by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

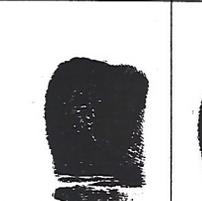
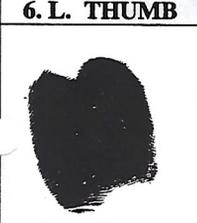
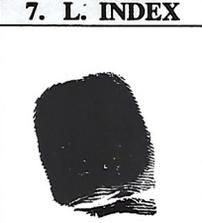
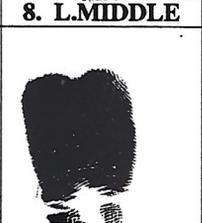
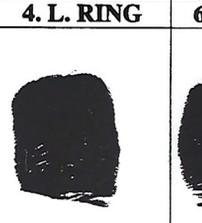
JUDGE

I hereby certify that a true and correct copy of the above and foregoing was served on the State Attorney by: hand delivery U.S. mail and to the Defense Attorney by: hand delivery U.S. mail this 13 day of Nov, 2000

Deputy Clerk

DIVISION:	[]	ADJUDICATION WITHHELD	CASE NUMBER
CRIMINAL	[X]	ADJUDICATED GUILTY	98 5739 CF10A CF CF10

FINGERPRINTS OF DEFENDANT

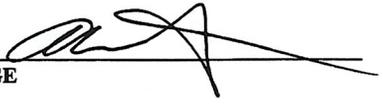
1. R. THUMB	2. R. INDEX	3. R. MIDDLE	4.R. RING	5. R. LITTLE
				
6. L. THUMB	7. L. INDEX	8. L.MIDDLE	4. L. RING	6. R. LITTLE
				

Fingerprints taken by:

Terry Trout 7304 Court Deputy
Name & Title

DONE AND ORDERED in Open Court at Broward County, Florida this 13 day of Nov. 2000.

I HEREBY CERTIFY that the above and foregoing fingerprints of the Defendant Ernesto Behrens, and that they were placed thereon by said Defendant in my presence in Open Court this date.


JUDGE

17 17th Judicial Circuit in and for Broward County

CLOCK IN

DIVISION:
Criminal
FP

SENTENCE

as to Count I

THE STATE OF FLORIDA VS.

Ernesto Behrens

CASE NUMBER

98 5739 CF/10A

DEFENDANT

The Defendant, being personally before this court, accompanied by his attorney, JAMES LEWIS and having been adjudicated guilty herein, and the court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he sentenced as provided by law, and cause shown,

Check One

and the Court having on 9/14/00 deferred imposition of sentence until this date.

and the Court having previously entered a judgment in this case on the defendant now resentsences the defendant.

and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control.

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$ _____, pursuant to F. S. 775.063, plus \$ _____ at the 5% surcharge required by F. S. 960.25.

The Defendant is hereby committed to the custody of the Department of Corrections.

The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.

The Defendant is hereby sentenced as a youthful offender in accordance with F. S. 958.04.

TO BE IMPRISONED (check one: unmarked sections are inapplicable)

For a term of Natural Life.

For a term of _____

Said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If "split" sentence, complete either paragraph.

Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Correction according to the terms and conditions of supervision set forth in separate order entered herein.

However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: Hand delivery U.S. Mail and to the Defense Attorney by: Hand delivery U.S. Mail this 13 day of NOV, 2000

DIVISION:
CRIMINAL

SENTENCE
(AS TO COUNT I)

CASE NUMBER

98 5739 CF10A

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count I)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

- FIREARM** It is further ordered that the three year minimum imprisonment provision of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this court.
- DRUG TRAFFICKING** It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this court.
- CONTROLLED
SUBSTANCE WITHIN
1000 FEET OF SCHOOL** It is further ordered that the three year minimum imprisonment provision of Florida Statute 893.13(1)(e) 1, are hereby imposed for the sentence specified in this court.
- HABITUAL FELONY
OFFENDER** The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in this sentence in accordance to the provisions of Florida Statute 775.084(4). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- HABITUAL VIOLENT
OFFENDER** The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in this sentence in accordance with the provision of Florida Statute 775.084(4). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- LAW ENFORCEMENT
PROTECTION ACT** It is further ordered that the Defendant shall serve a minimum of _____ years before release in accordance with Florida Statute 775.0823.
- CAPITOL OFFENSE** It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of Florida Statute 775.082(1).
- VIOLENT CAREER
CRIMINAL** The defendant is adjudicated a violent career criminal offender and has been sentenced to an term in accordance with the provision of Florida Statute 775.084(4)(c). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- PRISON RELEASEE
OFFENDER** The defendant is sentenced as a prison releasee reoffender and must serve a term of imprisonment of _____ years in accordance with the provisions of Florida Statute 775.082(8)(a)2.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: Hand delivery [] U.S. Mail and to the Defense Attorney by: Hand delivery [] U.S. Mail this 13 day of NOV, 2005.

DIVISION:
CRIMINAL

SENTENCE

CASE NUMBER

(AS TO COUNT I)

FP

98 5731 CF 107A

OTHER PROVISIONS

FIREARM/DESTRUCTIVE
DEVICE

It is further ordered that the _____ year mandatory minimum imprisonment provision of Florida Statute 775.087(2) and (3) is hereby imposed for the sentence in this count.

THREE-TIME VIOLENT
FELONY OFFENDER

The Defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084. The requisite findings by the court are set forth in a separate order or as stated on the record in open court.

SHORT-BARRELED RIFLE,
SHOTGUN, MACHINE GUN

It is further ordered that the five-year minimum provisions of Florida Statute 790.221(2) are hereby imposed for the sentence specified in this count.

CONTINUING CRIMINAL
ENTERPRISE

It is further ordered that the 25 year mandatory minimum sentence provisions of Florida Statute 893.20 are hereby imposed for the sentence specified in this count.

RETENTION OF
JURISDICTION

The court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16(3).

JAIL CREDIT

It is further ordered that the defendant shall be allowed a total of 957 days as credit for time incarcerated prior to imposition of this sentence.

PRISON CREDIT

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

CONSECUTIVE/
CONCURRENT AS
TO OTHER COUNTS

It is further ordered that the sentence imposed by this court shall run _____ consecutive to _____ concurrent with (check one) the sentence set forth in count _____ of this case.

HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: Hand delivery [] U.S. Mail and to the Defense Attorney by: Hand [] U.S. Mail this 13 day of NOV 20 02.

~~17~~ 17th Judicial Circuit in and for Broward County

CLOCK IN

DIVISION:

Criminal

FP

SENTENCE

as to Count

II

THE STATE OF FLORIDA VS.

CASE NUMBER

DEFENDANT

Ernesto Behrens

98 5739 CF10A

The Defendant, being personally before this court, accompanied by his attorney, James Lewis and having been adjudicated guilty herein, and the court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he sentenced as provided by law, and cause shown,

Check One

- and the Court having on 9/14/00 deferred imposition of sentence until this date.
- and the Court having previously entered a judgment in this case on the defendant now resentences the defendant.
- and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control.

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$ _____, pursuant to F. S. 775.063, plus \$ _____ at the 5% surcharge required by F. S. 960.25.

- The Defendant is hereby committed to the custody of the Department of Corrections.
- The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.
- The Defendant is hereby sentenced as a youthful offender in accordance with F. S. 958.04.

TO BE IMPRISONED (check one: unmarked sections are inapplicable)

- For a term of Natural Life.
- For a term of _____
- Said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If "split" sentence, complete either paragraph.

- Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Correction according to the terms and conditions of supervision set forth in separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: Hand delivery
 U.S. Mail and to the Defense Attorney by: Hand delivery U.S. Mail this 13 day of NOV, 2000

244

DIVISION:
CRIMINAL

SENTENCE
(AS TO COUNT II)

CASE NUMBER

98 5739 CF10A

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count II)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

- FIREARM It is further ordered that the three year minimum imprisonment provision of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count.
- DRUG TRAFFICKING It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this count.
- CONTROLLED
SUBSTANCE WITHIN
1000 FEET OF SCHOOL It is further ordered that the three year minimum imprisonment provision of Florida Statute 893.13(1)(e) 1, are hereby imposed for the sentence specified in this count.
- HABITUAL FELONY
OFFENDER The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in this sentence in accordance to the provisions of Florida Statute 775.084(4). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- HABITUAL VIOLENT
OFFENDER The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in this sentence in accordance with the provision of Florida Statute 775.084(4). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- LAW ENFORCEMENT
PROTECTION ACT It is further ordered that the Defendant shall serve a minimum of _____ years before release in accordance with Florida Statute 775.0823.
- CAPITOL OFFENSE It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of Florida Statute 775.082(1).
- VIOLENT CAREER
CRIMINAL The defendant is adjudicated a violent career criminal offender and has been sentenced to an term in accordance with the provision of Florida Statute 775.084(4)(c). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- PRISON RELEASEE
OFFENDER The defendant is sentenced as a prison releasee reoffender and must serve a term of imprisonment of _____ years in accordance with the provisions of Florida Statute 775.082(8)(a)2.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: Hand delivery
[] U.S. Mail and to the Defense Attorney by: Hand delivery [] U.S. Mail this 13 day of NOV, 2000.

DIVISION:
CRIMINAL

SENTENCE
(AS TO COUNT II)

CASE NUMBER

98 5739

CF10A

OTHER PROVISIONS

- FIREARM/DESTRUCTIVE DEVICE [] It is further ordered that the _____ year mandatory minimum imprisonment provision of Florida Statute 775.087(2) and (3) is hereby imposed for the sentence specified in this count.
- THREE-TIME VIOLENT FELONY OFFENDER [] The Defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084. The requisite findings by the court are set forth in a separate order or as stated on the record in open court.
- SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN [] It is further ordered that the five-year minimum provisions of Florida Statute 790.221(2) are hereby imposed for the sentence specified in this count.
- CONTINUING CRIMINAL ENTERPRISE [] It is further ordered that the 25 year mandatory minimum sentence provisions of Florida Statute 893.20 are hereby imposed for the sentence specified in this count.
- RETENTION OF JURISDICTION [] The court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16 (3).
- JAIL CREDIT It is further ordered that the defendant shall be allowed a total of 957 days as credit for time incarcerated prior to imposition of this sentence.
- PRISON CREDIT [] It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to re-sentencing.
- ~~CONCURRENT~~ CONSECUTIVE AS TO OTHER COUNTS It is further ordered that the sentence imposed by this court shall run _____ consecutive to concurrent with (check one) the sentence set forth in count II of this case.
- CONSECUTIVE CONCURRENT AS TO OTHER CONVICTIONS [] It is further ordered that the composite term of all sentences imposed for the courts specified in this order shall run _____ consecutive to _____ concurrent with (check one) the following:
 _____ Any active sentence being served.
 _____ Specific sentences:

PSI ORDERED YES [] NO []

In the event the above the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the Court further recommends _____

DONE AND ORDERED in Open Court at Broward County, Florida, this 13 day of NOV, 2000

JUDGE 

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: [] Hand delivery [] U.S. Mail and to the Defense Attorney by: [] Hand delivery [] U.S. Mail this 13 day of NOV, 2000

246

IN THE COUNTY/CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 98-5739 CF 10 A

JUDGE Horowitz

STATE OF FLORIDA,

Plaintiff,

vs.

Ernesto Behrens

Defendant(s).

JUDGMENT AND
RESTITUTION ORDER
(F.S. 775.089)

THIS CAUSE having come on to be heard on the 13th day of November, A.D. ~~to~~ 2000,

upon the State's motion for an Order requiring that the Defendant herein, pursuant to §775.089, Florida Statutes, pay restitution costs for the benefit of the aggrieved party herein:

(Name) Denise Wood Arsenault
(Address) 1521-B N.W. 80th Avenue
(City, State ZIP) Margate, Florida 33063

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON 11/13/00
BY H. Harpe

and the Court being fully advised in the premises, it is thereby

ORDERED AND ADJUDGED as follows:

Restitution is not applicable in this case because the victim suffered no financial loss for which restitution was requested

The State's Motion is hereby granted and the Defendant shall pay restitution for the benefit of the above-named aggrieved party, in the total sum of _____

(\$ _____)

1. Payment shall be made to Clerk of Circuit Court (felony)
 Clerk of County Court (misdemeanor)
 Parole & Probation (State - felony)
 County Probation (misdemeanor)

2. Payment Schedule [Check applicable instruction(s)]

Total shall be paid in installment payments of \$ _____, payable during the term of probation on a weekly monthly basis.

Judgment and Restitution Order, continued

The Department of Corrections is ordered to collect any monetary payments made directly to the prisoner and any compensation for work performed in community programs and pay the money to the aggrieved party until restitution is paid in full. See §946.002(2)(a)(b)(c), Florida Statutes.

The Department of Corrections or County Probation Officer is ordered to determine if the victim has received an award from the Bureau of Crimes Compensation (Tel: 904/488-0848). If an award has been made to the victim the Department of Corrections or County Probation Officer is ordered to collect from the prisoner and pay to the "CRIMES COMPENSATION TRUST FUND" an amount of money equal to the award. See §§960.17, and, specifically, 960.17(4), Florida Statutes.

The Department of Corrections and Parole & Probation Commission are ordered to make restitution payable to the victim a special condition of any work release or any kind of early release program for the Defendant. See §§947.181, Florida Statutes.

The Court retains jurisdiction to modify restitution in this case.

Other, specified conditions: _____

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of the Court shall provide to the aggrieved party named herein a certified copy hereof, in order for the aggrieved party to record this judgment as a lien, pursuant to §55.10, Florida Statutes.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 13th day of November, A.D. 2000.



HONORABLE Alfred Horowitz
Judge of the County/Circuit Court

Copies:

- State Attorney
- Defense Counsel
- Victim (Certified copy)
- Probation Officer
- Dept. of Corrections

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THE CIRCUIT/COUNTY COURT, IN AND JR BROWARD COUNTY, FLORIDA

FAILURE TO PAY FINE BY THE BELOW DATE MAY RESULT IN A WARRANT FOR YOUR ARREST AND/OR THE SUSPENSION OF YOUR DRIVER'S LICENSE AND DELINQUENCY FEES IMPOSED.

DATE 11/13/00 CASE NO. 98-5739CF10A ARREST NO. B578 6793 AGENCY JC

DEFENDANT Ernesto Behrens AKA _____

COURT STATUS

TRIAL CHANGE OF PLEA TRUST FUND / HOURS COMM. SER. ASSESSMENT HIGH CO
 JURY PLED GUILTY VC EACH COUNT 5.00
 COURT PLED NOLO DISMISSED PUBLIC DEFENDER ASSESSMENT
 1ST V.O. NOLLE PROSEQUI PUBLIC DEFENDER ASSESSMENT
 FINAL V.O. PUBLIC DEFENDER FEE

CHARGE(S) I Sexual Battery/Armed
II Burg Dwelling w/Battery

COUNT _____ DUI USE ONLY _____
PROBATION WITH SPECIAL CONDITIONS _____
FINE CC _____ 5% _____ VC _____
C/JC EMTF _____ CDC _____ SNI _____
DUI SCHOOL _____ EVALUATION _____
LICENSE SUSP. _____ DAYS IMMOBILIZATION _____ WORK PERMIT _____
COMMUNITY SERVICE HOURS _____

SENTENCE: 1-11 Life in Prison both counts concurrent with no parole with cred.
957 day Time and NO contact w vict in this case!

Defendant Declared a Sexual Predator.

P.D. appointed for appeals Purposes

COUNT(S)	FINE	5%	V.C.	C/JC	SNI	TIME SERVED		DAYS
						COURT COST	COURT COST	
	\$							
	\$							
	\$							
	\$							
PLUS \$								
DEFERRAL FEE TO: _____								

/s/ Alfred Horowitz JUDGE

RY _____

17th Judicial Circuit in and for Broward County
Criminal Division

**UNIFORM COMMITMENT TO CUSTODY OF
DEPARTMENT OF CORRECTIONS**

The Circuit Court of BROWARD County in the ~~_____~~ ^{FALL} Term, 2000 in the case of
STATE OF FLORIDA

VS.

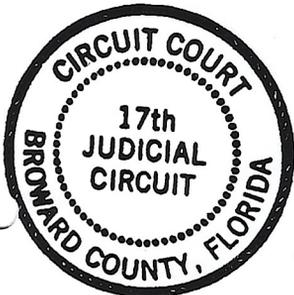
Ernesto Behrens
(DEFENDANT)

98 5739CF10A
(CASE NUMBER)

**IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF
SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETINGS:**

The above named defendant having been duly charged with the offense specified herein in the above styled Court, and having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears from the attached certified copies of indictment/information, Judgment and Sentence, and Felony Disposition and Sentence Data form which are hereby made parts hereof;

Now therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the said defendant, together with any pertinent investigation Report prepared in this case, into the custody of the Department of Corrections of the State of Florida; and this is to command you, the said Department of Corrections, by and through your Secretary, Regional Directors, Superintendents, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correction system to which you, the said Department of Corrections, may cause the said defendant to be conveyed to thereafter transferred. And these presents shall be your authority for the same. Herein fail not.



WITNESS the Honorable ALFRED J. HOROWITZ
Judge of said Court, as also
ED KENNEDY, Clerk, and the
Seal thereof, this day of NOV 13 2000,
ED KENNEDY, Clerk

BY Karen Haynie
Deputy Clerk