

# **EXHIBIT**

**"A"**

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

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CASE NO: 98-5739CF10A

RECEIVED  
CLERK, CIRCUIT COUNTY COURT  
BROWARD COUNTY, FL.

JUDGE: Alfred Horowitz

STATE OF FLORIDA, :

Plaintiff, :

vs. :

ERNESTO BEHRENS, :

Defendant. :

**MOTION TO IMPOSE SENTENCE WHICH IS UPWARD DEPARTURE FROM  
RECOMMENDED GUIDELINE SENTENCE**

*COMES NOW* the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully moves this Honorable Court, pursuant to F.S. 921.0016(3) (1995), to impose a sentence upon the Defendant which would constitute an upward departure from the recommended guidelines sentence in this case, and as grounds states the following:

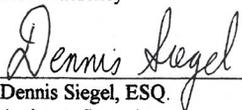
1. On September 14, 2000, the Defendant was found guilty by a jury of Sexual Battery - Armed and Burglary Of A Dwelling With A Battery.
2. The recommended guideline sentencing range appears to be 115.8 months to 190 months state prison.
3. Pursuant to F.S. 921.0016(3)(r)(1995), the aggravating circumstance exists, which reasonably justifies an upward departure sentence, that the primary offense of which the Defendant was convicted is a level ten offense, and the Defendant has previously been convicted of two counts of Armed Burglary, level eight offenses.

4. The Defendant was convicted of two counts of Conspiracy To Possess Stolen Property in the District Court of Clark County, Nevada, in case number 97-C-146497 on or about March 3, 1998, which offenses do not constitute prior convictions and are thus unscorable. Unscorable convictions constitute a valid aggravating circumstance to upwardly depart from the recommended sentencing guideline range. Smith v. State, 515 So. 2d 182 (Fla.1987), *cert. denied*, 485 U.S. 971, 108 S.Ct. 1249, 99 L.Ed. 2d 447(1988); Freeman v. State, 663 So. 2d 675 (Fla. 4<sup>th</sup> DCA 1995).
5. The Defendant entered a plea of guilty to an information charging him with Grand Theft in the Circuit Court of the 15<sup>th</sup> Judicial Circuit of Florida in case number 95-9832CF A02 on May 29, 1996, which offense does not constitute a prior conviction and is thus unscorable. Unscorable convictions constitute a valid aggravating circumstance to upwardly depart from the recommended sentencing guidelines range. Smith, supra; Freeman, supra.
6. The sexual battery for which the Defendant was convicted clearly evidenced heightened premeditation or calculation which justifies an upward departure sentence. Marcott v. State, 650 So. 2d 977 (Fla.1995).

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mailhand delivery this 19 day September of , 2000, to: Tyrone A. Terrell, ESQ., 1895 W. Commercial Blvd., Suite 135, Fort Lauderdale, Fl 33309

MICHAEL J. SATZ  
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By:

  
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