

**EXHIBIT**

**"F"**

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

STATE OF FLORIDA,  
Plaintiff

Case No: 90-1320CF10A

V.

ERNESTO BRHRENS,  
Defendant.

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**DEFENDANT'S MOTION TO CLARIFY AND/OR CORRECT FORMAL CLERICAL  
MISTAKES IN THE COURT'S JUDGMENT AND DECREE BY *NUNC PRO TUNC*  
ORDER**

**COMES NOW**, the Defendant, Ernesto Behrens, *pro se*, and respectfully moves this Honorable Court pursuant to the applicable Florida Rules of Criminal Procedure to clarify and/or correct formal clerical mistakes in the Court's judgment and decree by *nunc pro tunc* order. The Defendant in support thereof, shows the Court as follows:

**RELEVANT PROCEDURAL BACKGROUND**

1. The judgment of conviction and sentence was entered in the Seventeenth Judicial Circuit Court, in and for Broward County, Florida. The Honorable John A. Frusciantie, presiding.
2. The Court's reporter in this case was Nancy Dormi.
3. The State of Florida was represented by Assistant State Attorney Kathleen George.

4. The Defendant was represented by privately retained counsels Arthur Joel Levine, Esq., and Michael N. Lygnos, Esq.

5. On February 6, 1990, the Defendant was charged in a six-count information with Counts 1 and 2, armed burglary of an unoccupied dwelling pursuant to section 810.02(2), Fla. Stat. (1989); Count 3, possession of burglary tools pursuant section 810.06, Fla. Stat. (1989), Count 4, tampering with evidence pursuant to section 918.13, Fla. Stat. (1989); and Counts 5 and 6 grand theft pursuant to section 812.014(1)(a,b) and 2(c), Fla. Stat. (1989).

6. On May 14, 1992, after two years of plea negotiations, and with the approval of the State, the Defendant entered an "*Alford*" plea to five of the six counts alleged in the information.<sup>1</sup> The plea provided that the Defendant would plea to two reduced Counts of burglary of an unoccupied dwelling, carrying maximum sentences of 15-years in the Florida Department of Corrections; one Count of possession of burglary tools, carrying a maximum sentence of 5-years in the Florida Department of Corrections; and two Counts of grand theft, carrying maximum sentences of 5-years in the Florida Department of Corrections. Count 4, tampering with evidence would be dismissed by the Court and the Defendant would agree to waive his right to appeal. According to this plea, the State recommended a sentence of 2-years of community control followed by 3-years of probation.

7. At sentencing, the judge conducted a thorough plea colloquy, accepted the Defendant's plea and immediately imposed the agreed sentence upon the Defendant.

8. However, although the plea form correctly depicts the maximum penalties for each individual offense the Defendant plead guilty to, and it properly shows the dismissal of Count 4, tampering with evidence, it still erroneously purports to two Counts of (armed) burglary of an unoccupied

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<sup>1</sup> Should be noted that Florida Rules of Criminal Procedures 3.172(d) allows for pleas of convenience or best interest where the defendant simply acknowledges that the uncertain risk of trial on additional or more serious charges compels him to accept conviction and punishment on reduced charges even while maintaining innocence. See: *North Carolina v. Alford*, 400 U.S. 25 (1970) (Defendant, charged with first degree murder, protested his innocence but plead guilty to second degree murder to avoid a possible death sentence).

dwelling instead of the two Counts of burglary of an unoccupied dwelling the Defendant ultimately plead to.

9. Equally mistaken is the judgment form which depicts (armed) burglary of an unoccupied dwelling, under section 810.02(1), classified as a first-degree felony offense instead of just burglary of an unoccupied dwelling, under section 810.02(3) a second-degree felony offense.

10. Additionally, the scoresheet in this case, unambiguously depicts multiple deletions and additions being made without identifying the individual who made the changes or specifying when those changes took place. However, the scoresheet clearly shows that the person making the changes mistakenly upgraded the felony offense while scoring it, instead of reducing it to second-degree felonies according to the plea entered by the Defendant.

11. Appears to the Defendant that the judge never redacted the word "armed" from the plea form and the State inadvertently never filed the superseded information charging the reduced charges of "burglary of an unoccupied dwelling." Therefore, the judge simply imposed the agreed sentence on the wrong charges.

12. In 1995, the terms of community control and probation imposed in this case were early terminated and successfully completed.

13. In 2005, the Defendant contacted Mr. Arthur Joel Levine requesting a Sworn Affidavit stating the facts of what took place on the plea negotiations he represented the Defendant during the May 14, 1992 plea. Mr. Levine ultimately submitted the attached Sworn Affidavit.

14. Soon after the Defendant received the Sworn Affidavit, Hurricane Katrina threatened the Institution where the Defendant was staying at. So the Defendant immediately mailed this affidavit to his friend Franziska Kaltenbach to secure it for him.

15. Unfortunately, the Affidavit got lost/misplaced while at the house of Ms. Kaltenbach.



16. It was late in 2005, when the Defendant tried to contact Mr. Levine for a copy of his Affidavit. At that time the Defendant found out that Mr. Levine had passed away a few months earlier that year. At that point and time, the Defendant was without Mr. Levine's live testimony and without his Sworn Affidavit.

17. It was recently that Ms. Kaltenbach while she was going through some old boxes in her home, that she came across the lost/misplaced Affidavit from Mr. Levine, here attached.

This Motion follows:

### ARGUMENT

Although the Rules of Criminal Procedures do not include a rule authorizing the correction of errors in judgements, the Florida Supreme Court has determined that a court of record may, even after expiration of term, correct formal clerical mistakes in its judgements and decrees by *nunc pro tunc* order, which will, as a general rule, relate back to and take effect as of date of judgment or decree so corrected. See *Boggs v. Wainwright*, 223 So.2d 326 (Fla. 1969).

The Appellate Courts have expanded this determination into a *de facto* adoption of Fla. R. Civ. Proc. 1.540(a) in criminal proceedings in that:

"Clerical mistakes in judgements, decrees, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders." See: *Luhrs v. State*, 394 So.2d 137, 139, n.1 (Fla. 5th DCA 1981).

Since *nunc pro tunc* simply means "now for then," when applied to the entry of a legal order or judgment it normally does not refer to a new or fresh (*de Novo*) decision, as when a decision is made after the death of a party, but relates to a ruling or action actually previously made or done but concerning which for some reason the record thereof is defective or omitted. The later record making does not itself have a retroactive effect but it constitutes the later evidence of a prior effectual act. See: *Luhrs*, *supra*.

A judgment *nunc pro tunc* presupposes a judgment actually entered at the proper time, but not entered or adequately recorded. Thus, the proper use of a *nunc pro tunc* order is to make the record "speak the truth" as to what actually occurred.

Therefore, in this particular case, because the requested change and clarification would not affect any legal rights and obligations — the Defendant would remain convicted of the two reduced counts of burglary of an unoccupied dwelling and sentenced as before, and his terms of community control and probation have already been successfully completed. This Court now can clarify, by a *nunc pro tunc* order, the sentence imposed to overcome the clerical errors and omissions in this Court's judgment and decree to now indicate that the sentence of 2-years of community control followed by 3-years of probation imposed upon the Defendant on May 14, 1992, was for the two reduced Counts of burglary of an unoccupied dwelling (Counts 1 and 2) , and the one Count of possession of burglary tools (Count 3) and the two Counts of grand theft (Counts 5 and 6).

**WHEREFORE**, based on the forgoing facts, arguments, authorities and the Court and jail files and records, the Defendant prays this Honorable Court clarifies and correct formal clerical mistakes in the Court's judgment and decree by a *nunc pro tunc* order, and grant any other such just and fair relief this Court deems proper.

Respectfully Submitted,

[S]  
Ernesto Behrens, DC# 732564

## OATH

**UNDER PENALTIES OF PERJURY** and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this Motion is found to be frivolous or made in bad faith. I certify that I understand the contents of the foregoing Motion, that the facts contained in the Motion are true and correct, and that I have a reasonable belief that the Motion is timely filed. I certify that this Motion does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the forgoing Motion or had the Motion read to me. I further certify that this Motion and its statements are made in good faith.

[S] \_\_\_\_\_  
Ernesto Behrens, DC# 732564

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY**, that a true and correct copy of the foregoing Motion was mailed via U.S. first class mail to: the Office of the State Attorney, at the Postconviction Unit, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301 and to the Broward County Main Courthouse, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301. On this \_\_\_\_ day of \_\_\_\_\_ 2022.

[S] \_\_\_\_\_,  
Ernesto Behrens, DC# 732564  
Martin Correctional Institution  
1150 S.W. Allapattah Road  
Indiantown, Florida 34956

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

STATE OF FLORIDA,  
Plaintiff

Case No: 90-1320CF10A

V.

ERNESTO BRHRENS,  
Defendant.

\_\_\_\_\_ /

**EXHIBITS TO DEFENDANT'S MOTION**

Exhibit A - Charging Information

Exhibit B - Plea Form

Exhibit C - Judgment Form and Sentencing

Exhibit D - Scoresheet (Rule 3.988)

Exhibit E - Affidavit of Arthur Joel Levine, Esq.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY**, that a true and correct copy of the foregoing Motion was mailed via U.S. First class mail to: the Office of the State Attorney, at the Postconviction Unit, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301 and to the Broward County Main Courthouse, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301. On this \_\_\_ day of \_\_\_\_\_ 2022.

[S] \_\_\_\_\_,  
Ernesto Behrens, DC# 732564  
Martin Correctional Institution  
1150 S.W. Allapattah Road  
Indiantown, Florida 34956

# **EXHIBIT**

**“A”**

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

THE STATE OF FLORIDA

vs.

ERNESTO JOSE BEHRENS

INFORMATION FOR

I.-II. ARMED BURGLARY (DWELLING)  
III. POSSESSION OF BURGLARY TOOLS  
IV. TAMPERING WITH EVIDENCE  
V.-VI. GRAND THEFT

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 his undersigned Assistant State Attorney, charges that

ERNESTO JOSE BEHRENS

on the 17th day of January, A.D. 1990, in the County and State aforesaid.

did then and there, as part of a common scheme, plan or purpose, unlawfully, enter or remain in a structure or the curtilage thereof, to-wit: a dwelling, located at 921 West Cypress Lane, Pompano Beach, Florida, property of Joan Brawer, with intent to commit therein the offense of Theft, to-wit: the obtaining, using, or endeavoring to obtain or use the property of another, said property being of value, with the intent to permanently or temporarily and unlawfully deprive the owner or any other person of said property or the use and benefit thereof, and in the course thereof he was armed or armed himself within such structure with explosives or a dangerous weapon, to-wit: a hatchet hammer, contrary to F.S. 810.02(1) and F.S. 810.02(2).

COUNT II

AND 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 his undersigned Assistant State Attorney, charges that ERNESTO JOSE BEHRENS, on the 17th day of January A.D. 1990, in the County and State aforesaid, did then and there, as part of a common scheme, plan or purpose, unlawfully, enter or remain in a structure or the curtilage thereof, to-wit: a dwelling, located at 919 West Cypress Lane, Pompano Beach, Florida, property of Jean Ratner with intent to commit therein the offense of Theft, to-wit: the obtaining, using, or endeavoring to obtain or use the property of another, said property being of value, with the intent to permanently or temporarily and unlawfully deprive the owner or any other person of said property or the use and benefit thereof, and in the course thereof he was armed or armed himself within such structure with explosives or a dangerous weapon, to-wit: a hatchet hammer, contrary to F.S. 810.02(1) and F.S. 810.02(2).

COUNT III

AND 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 his undersigned Assistant State Attorney, charges that ERNESTO JOSE BEHRENS, on the 17th day of January A.D. 1990, in the County and State aforesaid, did then and there, as part of a common scheme, plan or purpose, unlawfully have in his possession a tool, machine, or implement, to-wit: a hatchet hammer, with the intent to use the same or allow the same to be used to commit any burglary or trespass, contrary to F.S. 810.06.



COUNT IV

AND 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 his undersigned Assistant State Attorney, charges that ERNESTO JOSE BEHRENS, on the 17th day of January A.D. 1990, in the County and State aforesaid, did then and there, as part of a common scheme, plan or purpose, alter, destroy, conceal or remove any record, document, or thing, to-wit: burglary tools, with the purpose of impairing its verity or availability in a criminal trial, proceeding or investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury, or legislative committee of this state, to-wit: Pompano Beach Police Department, knowing that said proceeding or investigation is pending or is about to be instituted, contrary to F.S. 918.13(1)...

COUNT V

AND 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 his undersigned Assistant State Attorney, charges that ERNESTO JOSE BEHRENS, on the 17th day of January A.D. 1990, in the County and State aforesaid, did then and there, as part of a common scheme, plan or purpose, unlawfully use, or endeavor to use the property of Joan Braver, to-wit: jewelry, with the intent to either temporarily or permanently appropriate the property to his own use or to the use of any person not entitled thereto, knowing or having reason to know said property was stolen, contrary to F.S. 812.014(1)a., and (1)(b), and F.S. 812.014(2)c,

COUNT VI

AND 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 his undersigned Assistant State Attorney, charges that ERNESTO JOSE BEHRENS, on the 17th day of January A.D. 1990, in the County and State aforesaid, did then and there, as part of a common scheme, plan or purpose, unlawfully use, or endeavor to use the property of Jean Ratner, to-wit: jewelry, with the intent to either temporarily or permanently appropriate the property to his own use or to the use of any person not entitled thereto, knowing or having reason to know said property was stolen, contrary to F.S. 812.014(1)a., and (1)(b), and F.S. 812.014(2)c,

COUNTY OF BROWARD  
STATE OF FLORIDA

Personally appeared before me \_\_\_\_\_, 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, says that testimony has been received under oath from the material witnesses or witnesses and that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true by the material witness or witnesses and which, if true, would constitute the offense therein charged, and that he has instituted this prosecution in good faith.

Assistant State Attorney, 17th Judicial Circuit of Florida

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1980

ROBERT E. LOCKWOOD

Clerk of the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida

By \_\_\_\_\_ Deputy Clerk

To the within Information, Defendant presents

Not Guilty in Writing by Attorney

ROBERT E. LOCKWOOD

Clerk of the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida

By \_\_\_\_\_ Deputy Clerk

Case No. 90-13004

IN THE

CIRCUIT COURT

Seventeenth Judicial Circuit of Florida  
in and for Broward County  
STATE OF FLORIDA

THE STATE OF FLORIDA

vs.

Information for

Presented by State Attorney and Filed

FEB - 5 1980

ROBERT E. LOCKWOOD  
Clerk of the Circuit Court

MICHAEL J. SATZ  
State Attorney

FILED  
1980 FEB - 5 11 45 AM  
BROWARD COUNTY, FLORIDA



**EXHIBIT**

**“B”**

# In the Circuit Court of the Seventeenth Judicial Circuit In and for Broward County, Florida

CRIMINAL DIVISION  
JUDGE JOHN A. FRUSCIANTE

STATE OF FLORIDA vs. ERNESTO DEHRA

CASE NO.  
90-1320 CF

## ACKNOWLEDGMENT OF PLEA AND WAIVER OF RIGHTS

1. I am the above named defendant, and I enter my plea of: guilty/nolo contendere/guilty in my best interest to the following charges:

Armed Burglary (Dwelling) 2nd  
Poss. Burg. Tools  
Grav. Theft 3rd Dg (2nd)  
Poss. Burg. Tools

Maximum penalties

15 yrs  
5 yrs  
5 yrs  
5 yrs

2. I understand that I have the right to be represented by an attorney at all stages of these proceedings until this case is terminated; that I have a right to a jury trial; that I have the right to compel the attendance of witnesses on my behalf; that I have the right to confront and cross-examine witnesses testifying against me; that I have the right not to testify or to incriminate myself; and that I may remain silent if I so choose. I hereby waive and give up all of these rights by entering this plea. E2

3. I understand that by my plea, I give up the right to appeal any decisions made by the court to date. I understand that I have the right to appeal only the jurisdiction of the court to enter the judgment and the legality of sentence entered herein and that any such appeal must be filed within thirty days from the entry of judgment in this case. If I cannot afford a lawyer for appeal, one will be appointed for me. E2

4. I admit that there is a factual basis for the charges to which I am pleading, and I agree that the court may rely on the statements contained in the probable cause affidavit and police reports in determining this factual basis.

5. I understand that if the court accepts my plea to these charges, my sentence will be

2 1/2 years Community Control followed by 3 yrs Probation Filed in Open Court  
community control to commence on 10/1/92  
ON  
BY

Other than this proposed sentence, nobody has made any promises or representations to me, nor has anyone threatened me or in any way forced me to enter this plea. I am doing this freely and voluntarily.

6. I have had enough time to fully discuss the facts and circumstances surrounding my arrest with my lawyer and I do not need any further time to review this case with my attorney before entering into this plea.

7. I am represented by the undersigned attorney, with whom I have discussed the charges against me and any and all possible defenses to these charges. Any questions I have had about my case have been answered to my satisfaction, and I feel my attorney has represented me effectively and I am satisfied with this representation.

8. I understand that any answers contained in this Acknowledgment of Plea and Waiver of Rights Form can be used against me in a prosecution for perjury, or a violation of probation/community control proceeding.

9. I waive any right I might have to a Pre-Sentence Investigation.

10. I understand that, if I am not a United States citizen a plea in this case could have negative consequences on my immigration status including, but not limited to, deportation from this country.

11. I am not under the influence of any alcoholic beverage, drug or medicine at the time I sign this plea form. I am not suffering from any mental or physical problems which affect my understanding of this plea.

12. I have personally read the foregoing Acknowledgment of Plea and Waiver of Rights, and I have personally placed my initials over the number of each of the sections I have read. I understand everything stated in the foregoing Acknowledgment of Plea and Waiver of Rights, and I wish to enter my plea at this time.

Dated 5/14/92

Signed [Signature]  
DEFENDANT

I am the attorney of record and I have explained each of the above rights to the Defendant, and to the best of my knowledge and belief the defendant fully understands each and every one of them and the defendant has placed his/her initials over the numbers of each of those sections above. I have explained the nature of the charges and any possible defenses to these charges with the defendant, and I hereby concur with the defendant's decision to waive the above rights and to enter this plea.

Dated 5/14/92

Signed [Signature]  
ATTORNEY FOR DEFENDANT

# EXHIBIT

“C”



<input checked="" type="checkbox"/> 17th Judicial Circuit in and for Broward County <input type="checkbox"/> In the County Court in and for Broward County		CLOCK IN
DIVISION: <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> TRAFFIC <input type="checkbox"/> OTHER	92234934 JUDGMENT DIV.: <u>FI</u>	C R
THE STATE OF FLORIDA VS. <u>Ernesto Behrens</u> PLAINTIFF DEFENDANT		CASE NUMBER <u>90-1320CF</u>

☐ PROBATION VIOLATOR  
(Check if Applicable)

CT. ATTY. Kathy George  
CT. RPTR. Donna Davis

The Defendant, Ernesto Bahrens, is appearing personally before this Court represented by Arthur Levine, 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	CASE NUMBER
<u>III</u>	<u>Grand Burg.</u>	<u>810.02(1)</u>	<u>1</u>	
<u>III</u>	<u>Ass. Burg.</u>	<u>810.06</u>	<u>3</u>	
<u>III</u>	<u>Grand Theft</u>	<u>812.01(4)(b)</u>	<u>3</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 Twenty Dollars (\$20.00) 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).

(Check if Applicable)

☐ The Defendant is further ordered to pay a fine in the sum of \$ \_\_\_\_\_ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crime: Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s).)

☐ The Court hereby imposes additional court costs in the sum of \$ \_\_\_\_\_

☒ The Court hereby stays and withholds the imposition of sentence as to count(s) \_\_\_\_\_ and places the Defendant on probation for a period of 90 days under the supervision of the Department of Corrections (conditions of probation set forth in separate order).

☐ The Court hereby defers imposition of sentence until \_\_\_\_\_ (date)

☒ Pay \$200 Trust Fund pursuant to F.S. 27.3455

The Defendant in Open Court was advised of his right to appeal from this Judgment 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 of indigence.

COUNT(S) \_\_\_\_\_ : \_\_\_\_\_ DAYS BROWARD COUNTY











JAIL W/CREDIT FOR \_\_\_\_\_ DAYS TIMES SERVED

Form CC-351 (Revised 10/90)

Page 1 of 2

BEHRENS, ERNESTO DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> TRAFFIC <input type="checkbox"/> OTHER	( ) ADJUDICATION WITHHELD (H) ADJUDICATED GUILTY	CASE NUMBER 90-1320F
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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	9. L. Ring	10. L. Little
				

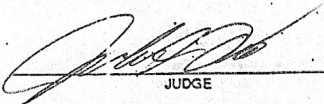
  

Fingerprints taken by:

Joe Wright Court Deputy  
 Name and Title

DONE AND ORDERED in Open Court at Broward County, Florida this 14 day of May  
 A.D. 19 92. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant  
Ernesto Behrens, and that they were placed thereon by said  
 Defendant in my presence in Open Court this date.

RECORDED IN THE OFFICIAL RECORDS BOOK  
 OF BROWARD COUNTY, FLORIDA  
 COUNTY ADMINISTRATOR

  
 JUDGE

BK 1953160168



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 9-14-92 CASE NO. 90-1320CF10 ARREST NO. PB90368 ROR/IC/SURETY NIC Action  
SUMMONS/CASH BOND \_\_\_\_\_ AGENCY \_\_\_\_\_

DEFENDANT Fernesto Bohrens AKA

<input type="checkbox"/> MAGISTRATE	<input type="checkbox"/> TRIAL	<input checked="" type="checkbox"/> CHANGE OF PLEA
<input type="checkbox"/> ARRAIGNMENT	<input type="checkbox"/> JURY	<input checked="" type="checkbox"/> PLED GUILTY
<input type="checkbox"/> SENTENCING	<input type="checkbox"/> COURT	<input type="checkbox"/> PLED NOLO
<input type="checkbox"/> PSI	<input type="checkbox"/> 1ST. V.O. _____	
<input type="checkbox"/> PDR	<input type="checkbox"/> FINAL V.O. _____	

**COURT STATUS**

ADUS 800 TRUST FUND / HOURS COMM. SERVICE  
☒ ADJ. GUILTY IN THE VC 5 ASSESSMENT EACH COUNT  
☐ WITHHELD VC EACH COUNT  
☐ NOLLE PROSEQUI ☒ DISMISSED  
☐ ACQUITTED




(S) I+II Armed Burg. (dwelling)  
 III Poss. Burg.  
 IV Lamp w/ Eyed  
 V-VI Grand Theft

SENTENCE 1 yr. Prob. Confin. followed by 3 yrs Prob. & Random  
W/parole Waive CDS -  
Cnts Conc.  
Pay Rest \$1200.00 Byp - 40 be pd. 1st

SENTENCE synt. com control followed by synt. prob. JC random  
analysis where CDs -

Pay Rent \$1200.00 Cap - to be pd. 1st

COUNT(S)		TIME SERVED		DAYS	
\$	FINE	COURT COST	5%	V.C.	CJC
\$	FINE	COURT COST	5%	V.C.	CJC
\$	FINE	COURT COST	5%	V.C.	CJC
\$	FINE	COURT COST	5%	V.C.	CJC
PLUS \$		DEFERENTIAL FEE TO:			

S/  PLUS \$ DEFERRAL FEE TO:   
JUDGE BY  (DEPUTY CLERK)  
FILE COPY

DISP 1 1/03

## JUDGE

FILE COPY

# **EXHIBIT**

**“D”**





## CRIMINAL PROCEDURE RULES

## Rule 3.988

Rule 3.988(c)  
Category 5: Burglary

## I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	80	96	104	112	
1st pbl	70	84	91	98	
1st	60	72	78	84	
2nd	30	36	39	42	
3rd	20	24	26	28	

Primary offense counts in excess of four:

Add 8 for each additional life \_\_\_\_\_  
 Add 7 for each additional 1st pbl \_\_\_\_\_  
 Add 6 for each additional 1st \_\_\_\_\_  
 Add 3 for each additional 2nd \_\_\_\_\_  
 Add 2 for each additional 3rd \_\_\_\_\_  
 Total \_\_\_\_\_

## II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	16	19	21	23	
1st pbl	14	16	18	20	
1st	12	14	16	17	
2nd	6	7	8	9	
3rd	4	5	6	7	
MM	1	2	3	4	

Additional offense counts in excess of four:

Add 2 for each additional life \_\_\_\_\_  
 Add 2 for each additional 1st pbl \_\_\_\_\_  
 Add 1 for each additional 1st \_\_\_\_\_  
 Add 1 for each additional 2nd \_\_\_\_\_  
 Add 1 for each additional 3rd \_\_\_\_\_  
 Add 1 for each additional MM \_\_\_\_\_  
 Total \_\_\_\_\_

## III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	60	130	210	307	
1st pbl	48	104	168	246	
1st	36	78	126	184	
2nd	18	39	63	90	
3rd	6	13	21	30	
MM	1	2	3	4	

Primary convictions in excess of four:

Add 97 for each additional life \_\_\_\_\_  
 Add 78 for each additional 1st pbl \_\_\_\_\_  
 Add 58 for each additional 1st \_\_\_\_\_  
 Add 27 for each additional 2nd \_\_\_\_\_  
 Add 9 for each additional 3rd \_\_\_\_\_  
 Add 1 for each additional MM \_\_\_\_\_  
 Total \_\_\_\_\_

## III. B. Same Category Priors

Add 5 for each prior category 5 offense

\_\_\_\_\_ Priors x 5 = \_\_\_\_\_ Total Points

## IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	10
Total	_____

## V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	0	_____		_____
Slight	5	_____		_____
Moderate	10	_____		_____
Death or severe	15	_____		_____
Total				_____

Rule 3.988(c)  
Category 2: Burglary

Chapter §10 - Burglary

Subsection §06.13(3) - Criminal Mischief

Section §17.025 - Obtaining Access to a Home or Private Business by False Personation or Representation

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
20 - 46	any nonstate prison sanction	any nonstate prison sanction
47 - 71	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
72 - 90	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
91 - 106	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
107 - 120	5 (4 1/2 - 5 1/2)	3 1/2 - 7
121 - 143	6 (5 1/2 - 7)	4 1/2 - 9
144 - 164	8 (7 - 9)	5 1/2 - 12
165 - 205	10 (9 - 12)	7 - 17
206 - 265	15 (12 - 17)	9 - 22
266 - 325	20 (17 - 22)	12 - 27
326 - 385	25 (22 - 27)	17 - 40
386 - 445	30 (27 - 40)	22 - Life
446 +	Life	27 - Life

Note — Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), §921.001(5), Fla. Stat. (Supp. 1988).

[G7571]

# **EXHIBIT**

**“E”**

**AFFIDAVIT OF ARTHUR JOEL LEVINE, ESQ.**

STATE OF FLORIDA                     }  
  S.S.  
COUNTY OF MIAMI-DADE         }

BEFORE ME, the undersigned authority, personally came and appeared Arthur Joel Levine, Esq. who, after being duly sworn, did depose and say:

1. I am Arthur Joel Levine. I am a resident of the State of Florida and am over the age of eighteen and am *sui juris*.

2. I am an Attorney at Law, and am a member in good standing of The Florida Bar. I have been a member since 1984.

3. From 1990-1992, I represented Ernesto Behrens in Broward County Circuit Court, Case No. 90-1320CF, before Judge Frusciante. Mr. Behrens was charged with armed burglary, possession of burglary tools, and grand theft.

4. Although I am not usually able to recollect elements of cases that I handled so many years ago, I so have a specific recollection of Mr. Behrens' case because of the extensive plea negotiations before and at the plea hearing.

5. I have also discussed this matter with my former law partner, Michael N. Lygnos, who was also intimately involved in the Behrens case and the plea negotiations, and who presently practices in Tampa.

6. I am the attorney who filled out the Plea Agreement signed by Ernesto Behrens.

7. The "armed" element of the burglary charge arose because the arresting agency charged Mr. Behrens with possessing a weapon during the burglary. The alleged "weapon" was either the crow bar or screwdriver that had been in Mr. Behrens' tool bag

when he was arrested, and I advanced that they were traditional burglary tools, not defensive or offensive weapons. I further advanced that since the burglary had had been planned to occur and did occur while no one was at home, the burglary was not of an occupied dwelling, and the burglary tools were not weapons because the burglary was planned to occur and did occur when there was no one in the home to use the "weapon" on.

8. After many discussions, the Prosecutor agreed to drop the "armed" from the burglary charge, and Mr. Behrens entered an *Alford* plea of guilty to the felonies of burglary of an unoccupied dwelling (that carried a 15-year maximum sentence), possession of burglary tools, and grand theft. The State agreed to recommend a sentence of 2-years' of Community Control, followed by 3-years' of probation.

9 My best recollection is that prior to approaching the Judge, the Prosecutor and I discussed the "armed", and the Prosecutor agreed that we would plead only to Burglary of an Unoccupied Dwelling and drop the "armed", and thus the maximum sentence would be fifteen (15) years.

10. When called, we approached Judge Frusciante, and I handed-up the signed plea agreement. Judge Frusciante then questioned Mr. Behrens, me, and the Prosecutor before taking the plea. Judge Frusciante specifically inquired about the "armed" charge, and was told by the Prosecutor that the State would be filing a Superseding Information charging the reduced charge of "burglary of an unoccupied dwelling", and that it was that charge that Mr. Behrens was pleading to.



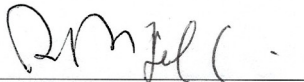
11. I believe it was for the sake of expediency that Judge Frusciante determined to go forward with the plea, instead of reconvening at another date after the Superceding Information had been filed.

12. At the time of this discussion, the plea agreement was in front of Judge Frusciante, elevated from my view, and I never saw the document or a copy of it again until just this week. It is my recollection that Judge Frusciante stated he would correct the plea agreement by redacting "armed"; he had a pen in his hand, appeared to write something, and it was my belief at the time that he had done so.

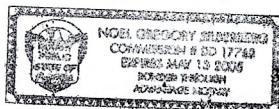
13. Had I not believed that the word, "armed" had been redacted from the plea agreement and that a Superceding Information charging a reduced offense would be filed, I would not have allowed Mr. Behrens to take a plea that day, and he would not have done do.


14. I believe now that I should have asked Judge Frusciante to allow me to review the plea agreement before I left the courtroom, but at the time I believed that the redaction had been made and I did not do so.

FURTHER AFFIANT SAYETH NAUGHT.

  
Arthur Joel Levine, Esq.

SWORN TO AND SUBSCRIBED before me, on this 31<sup>st</sup> day of March, 2005, in the city and county aforesaid, by Arthur Joel Levine, Esq., personally known to me, who did swear under oath that the above affidavit is true and correct to the best of his knowledge and belief.



  
Notary Public