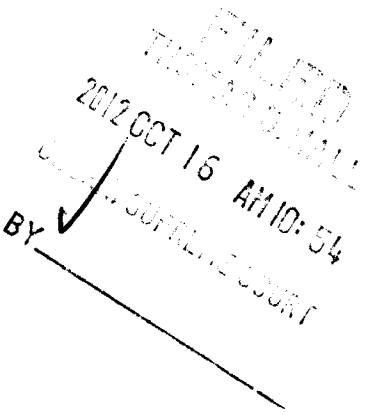

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-573
Lower Tribunal No. 3D10-2415

ANTHONY MACKEY,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

AMENDED BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

Petitioner, Anthony Mackey, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal. Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the Third District. The parties shall be referred by name. The symbols "R." and "SR." refer to the record on appeal and supplemental record on appeal. The symbol "D." refers to the deposition of Officer Alexander May which was supplemented to the record of appeal. The symbol "A." refers to the opinion of the lower court in case number 3D10-2415.

STATEMENT OF THE CASE AND FACTS

On March 29, 2010, Mackey was charged by information with possession of a firearm by a convicted felon and carrying a concealed firearm. (R. 7-10). On June 30, 2010, Mackey filed a motion to suppress the firearm, initially arguing that the firearm was openly visible and, thus, was not "concealed" as defined by §790.001(2), Florida Statutes (2010) to justify an investigatory stop. (R. 12-14). Alternatively, citing to *Regalado v. State*, 25 So. 2d 600 (Fla. 4th DCA 2009), Mackey further asserted that, because possession of a firearm is not illegal in Florida if the carrier has a concealed weapons permit, a fact that an officer cannot glean by mere observation, stopping a person solely on the fact that the individual possesses the firearm violates the Fourth Amendment. Specifically, he argued that

because the officer did not observe any facts or circumstances that would show that his possession was without a permit, there was no evidence of criminal activity sufficient to justify the stop. (R. 14-15).

On August 20, 2010, the trial court held the hearing on the motion to suppress which adduced the following:[1]

Officer Alexander May was employed by the City of Miami Police Department since June 2008. (D. 3). During the day of March 6, 2010, Officer May was driving a marked patrol unit in a location that he described as "a known narcotics location" and "he has known people to have guns in that area before." (D. 5, 6). For that reason, he stated, "I tend to look at a lot of hand motions and waistbands and pockets in this line of work, especially in that area." (D. 5).

Officer May saw Mackey standing alone on one side of a fence by an apartment complex. (D. 6). As the officer approached, he slowed down, and observed a solid object inside of Mackey's pocket. (D. 5, 7). As he drew closer, he observed a "piece of the handle sticking out. Not much, but a piece enough for [him] to identify a firearm." (D. 5, 7). Based on his training and experience, he knew that it was a firearm. (D. 8). Officer May exited his vehicle, approached Mackey and asked Mackey if he had anything on him. (D. 10). Mackey said,

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[1] Because the arresting officer, Officer May, was unavailable for the hearing, the State proceeded on the deposition transcript, as stipulated by Mackey. (SR. 6-12). The transcript was subsequently entered into evidence. (SR. 17).

"No." (D. 10). The officer then asked if he could pat him down. (D. 10).[2] The officer proceeded to conduct a pat down search of Mackey's pocket, felt the firearm he had seen earlier, retrieved it, and then specifically asked Mackey if he had a concealed weapons permit. (D. 8). When Mackey said "no," he was arrested and placed into custody. (D. 8). Mackey volunteered that he kept the firearm for "protection because he's been shot at before." (D. 10).

At the conclusion of the hearing, defense counsel initially argued that the firearm was not concealed. (SR. 17-22). The trial court denied the motion to suppress, finding that there was probable cause to arrest. (SR. 23, 25). The defense relying on *Regalado v. State*, 25 So. 3d 600 (Fla. 4th DCA 2009), then alternatively argued that, assuming the firearm was concealed, when the officer observed the concealed weapon, he did not know that Mackey did not have a concealed weapons permit. (SR. 23, 26-31). The trial court denied Mackey's second argument relying upon *Hernandez v. State*, 289 So. 2d 16 (Fla. 3d DCA 1974), finding that whether the gun was concealed or open, the officer could have stopped the Mackey in either instance. (SR. 28-31).

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[2] Based upon this record, there was no clear evidence as to whether Mackey consented to the pat down.

On August 30, 2010, Mackey filed a motion for rehearing which was denied. (R. 33-35, 57). Mackey pled guilty to both counts on August 31, 2010.[3] (R. 67-73). The trial court subsequently adjudicated Mackey guilty and sentenced him to a three year minimum mandatory term on count one and a three year term on count two to run concurrent with count one. (R. 41-43, 45-47, 73).

On direct appeal, Mackey relied on the Fourth District's decision in *Regalado*, arguing that the firearm should be suppressed since it is legal to carry a concealed firearm in Florida, so long as you have a permit to do so, and the officer did not have reasonable suspicion unless he had reason to believe that the defendant did not have a permit. (A. 4).[4]

On March 14, 2012, the Third District Court of Appeal affirmed the denial of the motion to suppress and certified express and direct conflict with *Regalado*. (A. 11). The court first noted that the precedent as established by *State v. Navarro*, 464 So. 2d 137 (Fla. 3d DCA 1984) (holding that a police officer's observation of a bulge under the clothing of an individual, which the officer in his training and

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[3] When Mackey pled guilty, he reserved the right to appeal the suppression issue. (R. 72).

[4] In his initial brief, Mackey alternatively argued that the officer lacked reasonable suspicion to stop him for openly carrying a firearm pursuant to § 790.053(1), Florida Statutes (2010) (prohibiting "any person to openly carry on or about his or her person any firearm"). However, during oral argument and, as noted in the Third District's opinion, Mackey did not contest the trial court's factual determination that the firearm was "concealed." (A. 4).

experience determined to be "the outline of a firearm[,] amounted to probable cause to believe that the individual was carrying a concealed weapon, justifying not merely a pat-down, but a search.") and *Hernandez v. State*, 289 So. 2d 16 (Fla. 3d DCA 1974) (holding that both the arrest for carrying a concealed firearm and the seizure of the firearm were proper where an officer saw a portion of a firearm partially protruding from the pocket of his trousers) required affirmance. (A. 6). The court further explained that the crime of carrying a concealed firearm is complete upon proof that the defendant knowingly carried a firearm that was concealed from the ordinary sight of another person and does not require knowledge of an absence of a license since possessing a license is not an element, but an affirmative defense. (A. 9-10).

Thereafter, this Court accepted jurisdiction based upon the Third District's certification of direct conflict between *Mackey v. State*, 83 So. 3d 942 (Fla. 3d DCA 2012) and *Regalado v. State*, 25 So. 3d 600 (Fla. 4th DCA 2010).

SUMMARY OF THE ARGUMENT

This Court should approve the decision of the Third District Court of Appeal. Based on the totality of the circumstances, the Third District correctly determined that the officer in this case had reasonable suspicion to stop Mackey and perform an accompanying pat down. Here, the incident took place in "a known narcotics location," where the officer "has known people to have guns in that area before." The officer identified a piece of the handle protruding from Mackey's pocket, which, based on his training and experience, he identified as a firearm. And, when the officer consensually and lawfully approached Mackey and asked Mackey if he had anything on him, Mackey lied and said, "no." At this point in time, having personally observed the firearm and been lied to by Mackey, the officer had the required reasonable suspicion to believe that Mackey's firearm possession was unlawful. Then, Mackey, when asked by the officer whether he had a concealed weapons permit, said, "no." The Third District's decision upholding an investigatory stop and pat down under these circumstances is amply supported by the other Florida district courts of appeal and by other state and federal jurisdictions.

ARGUMENT

I. THE THIRD DISTRICT COURT OF APPEAL PROPERLY HELD THAT THE OFFICER HAD REASONABLE SUSPICION TO CONDUCT A TERRY STOP.

A. The Third District properly upheld the investigatory stop and pat down at issue in this case.

The Third District correctly determined that the officer in this case had reasonable suspicion to stop Mackey based on the direct observation of Mackey with the firearm and the fact that Mackey lied to the officer about having a gun. There is no question that the *Terry* stop was appropriate at this juncture. Moreover, when the officer inquired as to whether he had a concealed weapons permit, Mackey said no. At that point, all the provisions of § 790.01, Florida Statutes, were met.

The Fourth Amendment to the United States Constitution and § 12 of Florida's Declaration of Rights guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const. Amend. IV; Art. I, § 12, Fla. Const. The Florida Constitution expressly provides that the right shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. *Id.*

This Court has defined three levels of police-citizen encounters. *See Popple v. State*, 626 So. 2d 185 (Fla. 1993). First are those referred to and defined as "consensual encounters," which involve minimal police contact and do not invoke

constitutional safeguards. *Id.* at 186. "During a consensual encounter a citizen may either voluntarily comply with a police officer's requests or choose to ignore them." *Id.* Second are those designated investigatory stops, at which time a police officer "may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime." *Id.* (citing § 901.151, Fla. Stat. (1991)). The third level is an arrest, which must be supported by probable cause that a crime has been or is being committed. *Popple*, 626 So. 2d at 186.

In the landmark case *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court established that a law enforcement officer who has a reasonable and articulable suspicion that criminal activity is afoot is permitted to conduct a brief investigatory stop even in the absence of probable cause. In the course of the stop, an officer may conduct a frisk or pat down of an individual in order to conduct a limited search for weapons "where he has reason to believe that he is dealing with an armed and dangerous individual." *Id.* at 27 ("[I]t would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.").

Reasonable suspicion is defined as "a particularized and objective basis for suspecting the particular person stopped of criminal activity" based upon "the

totality of the circumstances." *Terry*, 392 U.S. at 19-23. It need not involve the observation of illegal conduct, but does require "more than just a hunch." *United States v. Sokolow*, 490 U.S. 1, 7-8 (1989). Reasonable suspicion "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

Applying these principles to the facts of this case, the Third District correctly found that Officer May had reasonable suspicion to conduct an investigatory stop of Mackey. Significantly, as the Third District noted, "[w]hen Officer May first approached Mackey to ask him questions, the encounter was a consensual one, and no level of reasonable suspicion was required." *Mackey*, 83 So. 3d at 945. Officer May asked Mackey if he had anything on him, and Mackey lied. Officer May knew Mackey was lying. At this point in time, having personally observed the firearm and been lied to by Mackey, the officer had the required reasonable suspicion to believe that Mackey's firearm possession was unlawful.[5] Based on the totality of these circumstances, the officer thus had reasonable suspicion to *Terry* stop and frisk Mackey.

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[5] *See, e.g., Graham v. State*, 964 So. 2d 758 (Fla. 4th DCA 2007), *rev'd on other grounds*, (police had reasonable suspicion that the defendant had trespassed in condominium when he lied about how he entered the residence and his reason for being there); *State v. Gandy*, 766 So. 2d 1234 (Fla. 1st DCA 2000) (police officers had reasonable suspicion that drug transaction had taken place when the defendant

While the State believes that the totality of the circumstances establish reasonable suspicion in the instant case, both Mackey and the amicus in this case are couching the arguments in terms of whether the mere observation of a concealed firearm, by itself, constitutes reasonable suspicion—an issue which might hinge on whether the absence or existence of a license is an affirmative defense or an element of the offense. It is not necessary to reach that issue in this case. It is also an issue which is not properly before this Court, as it is beyond the scope of the certified conflict, *see Murray v. Regier*, 872 So. 2d 217, 223 n.5 (Fla. 2002) (addressing the scope of this Court's discretion when accepting jurisdiction to resolve a conflict), and because Mackey has never contested the nature of the existence of a license as an affirmative defense. That was not contested by Mackey in either the trial court or district court of appeal, and, in Mackey's Brief on the Merits in this Court, it accepted that that is an affirmative defense. *See* Petitioner's Brief on the Merits, 27-28. Since Mackey has accepted at all times that licensing is not an element of the offense, the lower courts in this case could properly have concluded that there was no requirement that the officer consider that fact prior to a *Terry* stop and patdown as part of the stop.

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lied to officers about his reason for parking in residence's driveway); *United States v. Duenas*, 331 Fed. Appx. 576 (10th Cir. 2009) (officers had reasonable suspicion to justify detention arising from a traffic stop when the defendant lied about his authority to drive a rental car in another state and his stated travel plans).

In any event, the Third District's decision in this case is amply supported by other Florida district courts of appeal, other state courts, and the federal courts. *See, e.g., State v. Navarro*, 464 So. 2d 137 (Fla. 3d DCA 1985) (holding that a police officer's observation of a bulge under the clothing of an individual, which the officer in his training and experience determined to be "the outline of a firearm[,] amounted to probable cause to believe that the individual was carrying a concealed weapon, justifying not merely a pat-down, but a search"); *Hernandez v. State*, 289 So. 2d 16 (Fla. 3d DCA 1974) (holding that both the arrest for carrying a concealed firearm and the seizure of the firearm were proper where an officer saw a portion of a firearm partially protruding from the pocket of his trousers); *State v. Burgos*, 994 So. 2d 1212 (Fla. 5th DCA 2008) (holding that the officers had probable cause to seize the weapon where, in investigating an anonymous tip that the defendant had been seen putting a firearm in his waistband, they approached defendant and asked him if he had anything that would harm them, and then defendant admitted that he had a firearm in his waistband); *Thomas v. State*, 250 So. 2d 15 (Fla. 1st DCA 1971) (holding that where police officer who noted bulge in defendant's hip pocket, and defendant accelerated his pace towards his automobile after viewing the officer approaching, officer had probable cause to believe that defendant was carrying a concealed weapon, and pistol discovered in the pocket, after officer felt outside pocket and noted sharpness of object inside,

was admissible); *Aguilar v. State*, 700 So. 2d 58 (Fla. 4th DCA 1997) (holding that statement by teenage boy that identified defendant leaving convenience store as person who he had seen enter public restroom with gun and was tip by citizen informant, and therefore, provided officers with valid reason to believe that defendant had concealed weapon and subsequent pat down was valid);

Most recently, in *United States v. Lewis*, 674 F.3d 1298, 1300 (11th Cir. 2012), the Eleventh Circuit was confronted with similar issues and adopted an analysis entirely consistent with the Third District's decision here. Like the Third District, the court noted that "the possession of a valid permit for a concealed weapon is not related to the elements of the crime, but rather is an affirmative defense." *Id.* At 1304. And the court went on to conclude that a person's admission to carrying a concealed weapon "was sufficient to justify briefly stopping him before inquiring further about whether he had an affirmative defense in the form of a valid concealed-weapons permit." *Id.*

In other state jurisdictions that treat a firearms license as an affirmative defense, courts have similarly upheld investigative stops in circumstances similar to the ones here. *See, e.g., State v. Timberlake*, 744 N.W.2d 390, 395 (Minn. 2008) (because the "lack of a permit [is] not an element of the offense, the police in this case did not need to know whether [the defendant] had a permit in order to have reasonable suspicion that [the defendant] was engaged in criminal activity");

United States v. Cooper, 293 Fed. Appx. 117, 118-20 (3d Cir. 2008) (because "licensure is an affirmative defense to a statutory violation for possession of a firearm . . . an officer's observance of an individual's possession of a firearm in a public place in Philadelphia is sufficient to create reasonable suspicion to detain that individual for further investigation"); *United States v. Gatlin*, 613 F.3d 374 (3d. Cir. 2010) (police had reasonable suspicion to believe that defendant was carrying a concealed handgun without a license, in violation of Delaware law, where a valid license is an affirmative defense); *United States v. Montague*, 437 Fed. Appx. 833 (11th Cir. 2011) (officers could conduct *Terry* stop of defendant for carrying concealed weapon despite law authorizing permits for concealed carry); *United States v. Morton*, 400 F. Supp. 2d 871 (E.D. Va. 2005) (officer could detain a person suspected of carrying concealed weapon in Virginia, since having permit was an affirmative defense); *Georgiacarry.org, Inc.*, 2009 WL 5033444 (officers had reasonable suspicion that suspect was engaged in unlawful activity as required for an investigative stop because a Georgia firearms license is an affirmative defense); *United States v. Lucas*, 68 Fed. Appx. 265 (2d Cir. 2003) ("That New York state permits certain licensed individuals to carry concealed weapons does not negate the officer's reasonable suspicion that unlawful activity was afoot . . . ."); *see also Schubert v. Springfield*, 589 F.3d 496 (1st Cir. 2009)

(officer had reasonable suspicion that defendant was engaged in criminal activity where he saw defendant walking toward courthouse carrying a gun).

Finally, in light of the facts giving rise to the offer's reasonable suspicion that Mackey's possession of a firearm was unlawful, the Third District's interpretation of § 790.01 is further buttressed by the inclusion of § 790.02, Florida Statutes (2012), which declares the carrying of a concealed weapon as a breach of the peace and "any officer is authorized to make arrests . . . without warrant of persons violating the provisions of s. 790.01 when *said officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.*" (Emphasis added). *See also West v. State*, 239 So. 2d 611, 612-13 (Fla. 2d DCA 1967); *Marden v. State*, 203 So. 2d 638, 640 (Fla. 3d DCA 1967); *Haynes v. State*, 72 So. 180, 184 (Fla. 1916); *Carlton v. State*, 58 So. 489, 488-89 (Fla. 1912).

B. This Court need not resolve any conflict between the Third District's decision here and the Fourth District's decision in *Regalado.*

Although the Fourth District's decision in *Regalado*, 25 So. 3d 600 (Fla. 4th DCA 2010), was the basis for certification with the Third District's opinion herein, that decision is inapplicable to this case. The *Regalado* court summarized its holding as follows: "stopping a person solely on the ground that the individual possesses a gun violates the Fourth Amendment." *Regalado*, 25 So. 3d at 606. As

discussed above, the officer in this case did not perform a *Terry* stop and frisk "solely" because Mackey possessed a gun. The officer did so because he was in a high crime area; he observed Mackey with a gun; and, in a consensual encounter, he was lied to by Mackey about the possession of the gun. These circumstances together gave the officer reasonable suspicion to believe Mackey's possession of the gun was unlawful. In light of these critical factual differences between this case and those in *Regalado*, *Regalado* offers no support for disturbing Mackey's conviction in this case.

Resolution of this case thus does not require this Court to resolve any conflict between the Third District's decision and the Fourth District's decision in *Regalado*. *See, e.g., Dep't of Revenue v. Johnston*, 442 So. 2d 950 (Fla. 1983) (dismissing appeal where facts distinguished purportedly conflicting cases). The Court should be especially reluctant needlessly to address such a conflict here. Fourth Amendment jurisprudence is an area of law where factual distinctions are particularly critical. And this case itself involves complex and difficult issues of officer safety, constitutional rights, and statutory interpretation.

II. THE CASES UPON WHICH MACKEY RELIES ARE INAPPLICABLE.

Mackey relies on a vast litany of cases which, upon review are completely irrelevant to the facts before this Court. The decision in *Commonwealth v. Couture*, 552 N.E.2d 538 (Mass. 1990), for example, is inapposite for the same

reason as *Regalado*. In contrast with the facts here, the court in *Couture* invalidated an investigatory stop premised on "[t]he mere possession of a handgun." *Id.* at 541.[6]

Delaware v. Prouse, 440 U.S. 648, 663 (1979) and *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975), simply involve random traffic or border patrol stops, matters which clearly are not at issue in this case. *Florida v. J.L.*, 529 U.S. 266 (2000), is relied upon for the contention that there is no "firearm exception" under the Fourth Amendment. That, too, is not at issue here, since *J.L.* involved the mere possession of a firearm, not a concealed firearm, let alone a concealed firearm coupled with multiple other factors.

Mackey also relied on *United States v. Jones*, 606 F.3d 964 (8th Cir. 2010) (Loken, C.J., concurring); *United States v. DeBerry*, 76 F.3d 884 (7th Cir. 1996); *State v. Stepney*, 84 Wash. App. 1083 (Wash. Ct. App. 1997) (unpublished opinion); and *United States v. Garvin*, No. 11-480-01, 2012 WL 1970385 (E.D. Pa May 31, 2012). Petitioner's Brief on the Merits, 17-18.

Jones simply held that the mere observation of a suspect clutching the front of a bloodied sweatshirt he was wearing did not constitute reasonable suspicion of

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[6] Mackey's reliance on Couture for the proposition that the elements of the crime and its burden of proof are only applicable at trial and does not extend to Fourth Amendment reasonable suspicion analysis has clearly been rejected by other courts. *See Lewis, supra.*

any offense. Mackey relies on language in a concurring opinion from *Jones*, none of which is relevant to the instant case given the totality of the circumstances establishing reasonable suspicion.

DeBerry merely held that an anonymous tip regarding a concealed firearm was sufficiently corroborated as to provide reasonable suspicion for a *Terry* stop under Illinois law. A reference, in dicta, questioned whether that would be true in Texas, where possession of a concealed firearm is not always unlawful. Apart from it being dicta, *DeBerry* is obviously not relevant to the instant case where the totality of the circumstances, above and beyond the observation of the firearm, established reasonable suspicion.

Stepney was not only an unpublished opinion, but merely held that an anonymous tip from a 911 call was not a reliable basis for an officer to detain and pat down the defendant. Beyond that, in the State of Washington, the absence of a firearms license is an element of the offense. *See* Wash. Rev. Code § 9.41.050(1)(a) (2012); Wash. Patt. J. Inst. Crim. 133.04 (2012). *Garvin*, like *Stepney*, simply held that an anonymous tip did not provide the basis for reasonable suspicion. And, there too, as in *Stepney*, even if *Garvin* had a broader holding, it was based on Pennsylvania law, where the absence of a license was an essential element. *Commonwealth v. McNeil*, 461 Pa. 709, 715 (Pa. 1975); *see* 18 Pa. Cons. Stat. § 6106 (2012).

In summary, the authorities cited by Mackey shed no pertinent light on the real issues before this Court and, more importantly, are factually or legally distinguishable. Based on the totality of the circumstances, the district court correctly determined that the officer in this case had reasonable suspicion to stop Mackey. For the reasons stated above, this Court should approve the decision of the Third District Court of Appeal.

Lastly, on October 8, 2012, an Amicus Brief in Support of Petitioner was filed which asserts, in part after reviewing language in the State's initial brief filed on October 4, 2012, that, "[a]ccording to the State a person with a gun is a criminal, until they prove they are not." Amicus Brief, 6. Rather, the State maintains that its position and the issue in this case concern whether reasonable suspicion for a *Terry* stop existed based on the undisputed facts. The standard for reasonable suspicion is not particularly high, and often exists where criminal conduct does not exist. *See Cortez*, 449 U.S. 411, 418 (1981) (Reasonable suspicion is not concerned with "hard certainties, but with probabilities); *United States v. Arvizu*, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct."); *Wardlow*, 528 U.S. at 126 (same).

In light of the misconception perceived by the Amicus in support of Mackey and filed after the State's initial brief, the instant amended brief by the State seeks

to address the certified issues before the Court and not detract from the relevant arguments made by the parties.

CONCLUSION

WHEREFORE, Respondent, THE STATE OF FLORIDA respectfully requests that this Court approve the decision of the Third District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Brief of Respondent on the Merits was mailed and electronically mailed to Michael T. Davis, Assistant Public Defender, Office of the Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125, and appellatedefender@pdmiami.com and mdavis@pdmiami.com, and Eric J. Friday, Esquire, Fletcher & Phillips, 541 E. Monroe Street, Suite 1, Jacksonville, Florida 32202, and familylaw@fletcherandphillips.com and efriday@fletcherandphillips.com, on this 15th day of October, 2012.

s/Shayne R. Burnham
SHAYNE R. BURNHAM
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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Answer Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

s/Shayne R. Burnham
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