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BY

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1446
Lower Tribunal No. F90-48092-B

ANA MARIA CARDONA,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.
_____/

MOTION TO STRIKE APPELLEE'SNOTICE OF CROSS APPEAL

The Appellant moves to strike the State of Florida's Notice of Cross Appeal, and in support of her motion states:

1. The Appellant filed her notice of appeal on July 8, 2011. It was docketed in this Court on July 22, 2011.

2. Florida Rule of Appellate Procedure 9.140(c)(3) provides that "the state's notice of cross appeal shall be filed within 10 days of service of the defendant's notice . . ."

3. Nevertheless, on February 8, 2012 the State for the first time filed a notice of cross-appeal. A copy of the notice is appended to this motion.

4. The time period for filing a notice of cross appeal is not jurisdictional. *See, e.g., Walker v. State*, 457 So. 2d 1136 (Fla. 1st DCA 1984). However, this

does not mean that Rule 9.140(c)(3) is a nullity. "[W]hile the filing period may be extended for good cause, this does not mean the period will be extended automatically or in every case." *Id.* at 1137.

5. Here, the State has made no effort to show good cause why its cross appeal should be exempted from the requirements of the Rules of Appellate Procedure. It has not even filed a motion for leave to file the untimely notice.

6. The Court should therefore strike the notice as untimely. *See Cornerston Dev. Group, Inc. v. Haraway*, 1 So. 3d 1277 (Fla. 1st DCA 2009) (dismissing cross appeal where there was no motion for leave of court to permit the late filing); *Sampson v. Sampson*, 566 So. 2d 831 (Fla. 5th DCA 1990) (same); *Dellecese v. Value Rent A Car*, 543 So. 2d 440 (Fla. 1st DCA 1989) ("As we find appellees failed to seek leave of this Court to file untimely notices of cross appeal showing good grounds for the delay, we grant appellant's motion and dismiss the cross appeals.").

WHEREFORE the Appellant moves to strike the State's Notice of Cross Appeal as untimely.

Respectfully submitted,

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit of Florida
1320 Northwest 14th Street
Miami, Florida 33125
(305) 545-1928

By: _____
ANDREW STANTON
Assistant Public Defender
Florida Bar No. 0046779

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand to the Counsel for Appellee Sandra Jaggard, Assistant Attorney General, Office of the Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131; and to Penny H. Brill, Assistant State Attorney, E.R. Graham Building, 1350 NW 12 Avenue, Miami, FL 33136-2111, on February 16, 2012.

_____
Andrew Stanton
Assistant Public Defender

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff/Appellee,
vs.

ANA CARDONA,
Defendant/Appellant.

Case No. F90-48092B

Judge Diaz

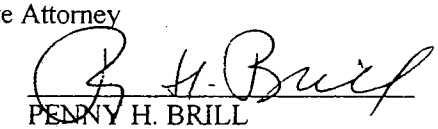
NOTICE OF CROSS-APPEAL

NOTICE IS HEREBY GIVEN that the State of Florida cross-appeals to the Supreme Court of Florida, rulings on questions of law which occurred regarding the penalty phase of the trial.

Respectfully submitted,

PAMELA JO BONDI
Attorney General

KATHERINE FERNANDEZ RUNDLE
State Attorney

By: 
PENNY H. BRILL
Assistant State Attorney
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1350 N.W. 12th Avenue
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(305) 547-0100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to the Andrew Stanton, Assistant Public Defender, Appellate Division, 1320 N.W. 14th Street, Miami, Fl 33125, on this the 8th day of February, 2012.

By:
PENNY H. BRILL
Assistant State Attorney