

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

TERRY FREEZE,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D01-2021
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed December 12, 2003.

Appeal from the Circuit Court  
for Hillsborough County;  
Jack Espinosa, Jr., Judge.

James Marion Moorman, Public  
Defender, and Deborah K. Brueckheimer,  
Assistant Public Defender, Bartow,  
for Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Janet A. McDonald and  
Jennifer R. Haymes, Assistant Attorneys  
General, Tampa, for Appellee.

KELLY, Judge.

Terry Freeze appeals from the order finding him to be a sexually violent  
predator and committing him to the custody of the Department of Children and Family  
Services pursuant to section 394.917(2), Florida Statutes (1999), the "Jimmy Ryce Act."

We affirm the commitment order based on Westerheide v. State, 831 So. 2d 93 (Fla. 2002). However, because Freeze argues that the trial court erred in failing to instruct the jury that the State was required to prove that he has serious difficulty in controlling his behavior, we certify the same question certified as one of great public importance in Lee v. State, 854 So. 2d 709, 716 (Fla. 2d DCA 2003):

MAY AN INDIVIDUAL BE COMMITTED UNDER THE  
JIMMY RYCE ACT IN THE ABSENCE OF A JURY  
INSTRUCTION THAT THE STATE MUST PROVE THAT  
THE INDIVIDUAL HAS SERIOUS DIFFICULTY IN  
CONTROLLING HIS OR HER DANGEROUS BEHAVIOR?

Affirmed; question certified.

NORTHCUTT and STRINGER, JJ., Concur.