

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)	
)	
Petitioner,)	
)	
v.)	Case No. 2D04-807
)	
TANIKA PERSON,)	
)	
Respondent.)	
_____)	

Opinion filed June 3, 2005.

Petition for Writ of Certiorari to the
Circuit Court for Polk County;
Roger A. Alcott, Judge.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Susan D. Dunlevy,
Assistant Attorney General, Tampa,
for Petitioner.

James Marion Moorman, Public
Defender, and Richard J. Sanders,
Assistant Public Defender, Bartow,
for Respondent.

KELLY, Judge.

The State seeks certiorari review of the trial court's order which finds
section 812.155(4)(b), Florida Statutes (2001), to be unconstitutional on the ground that
it creates a mandatory presumption that relieves the State of its burden of proving an

essential element of the offense of failing to return leased property. We hold that the trial court departed from the essential requirements of the law in finding that section 812.155(4)(b) is a mandatory presumption, rather than a permissive inference. See State v. Rygwelski, 30 Fla. L. Weekly D1053 (Fla. 2d DCA April 22, 2005) (holding that section 812.155(4)(b) creates a permissive inference, not a mandatory presumption, and, therefore, the defendant must make an as-applied challenge to its application under the facts of his case).

Accordingly, we grant the petition for certiorari, quash the order under review, and remand for further proceedings.

Petition for certiorari granted.

NORTHCUTT and WALLACE, JJ., Concur.