

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM A.D., 2004

CRAIG TRAPP,

Appellant,

v.

THE STATE OF FLORIDA,

Appellee.

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\*\* CASE NO. 3D03-2005

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\*\* LOWER

TRIBUNAL NO. 02-5538

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Opinion filed September 29, 2004.

An Appeal from the Circuit Court for Miami-Dade County,  
Leonard E. Glick, Judge.

Bennett H. Brummer, Public Defender, and Robert Kalter,  
Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General, and Thomas C.  
Mielke, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and GODERICH, and RAMIREZ, JJ.

PER CURIAM.

Affirmed in part, reversed in part. We find no abuse of  
discretion in the denial of the motion for mistrial made  
following the prosecutor's allegedly improper comment on Trapp's

right to remain silent and thus affirm the conviction. However, we conclude that the trial court erred in sentencing him as a violent career criminal because spitting on a police officer is not a qualifying offense for sentencing as a violent career criminal. See Johnson v. State, 858 So. 2d 1071 (Fla. 3d DCA 2003) (holding that spitting on a law enforcement officer is not a current qualifying offense for sentencing as a violent career criminal).

Affirmed in part, reversed in part, and remanded for a new sentencing proceeding.