

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

FEB 7 1985

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

vs.

JOSEPH CURTIS SMITH,

Respondent.

CASE NO. 66,428

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
SUMMARY OF ARGUMENT	4
ARGUMENT	
POINT I THE DISTRICT COURT OF APPEAL CORRECTLY HELD THAT THE PROSECUTION MUST PROVE EVERY ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT	6
POINT II THE DISTRICT COURT OF APPEAL'S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY OTHER DECISION	8
CONCLUSION	9
CERTIFICATE OF SERVICE	9

AUTHORITIES CITED

	<u>PAGE</u>
<u>CASES CITED</u>	
<u>Booker v. State</u> , 397 So.2d 910 (Fla. 1981)	4
<u>Davis v. State</u> , 326 So.2d 196 (Fla. 4th DCA 1976)	4
<u>L.S. v. State</u> , 446 So.2d 1148 (Fla. 3rd DCA 1984)	6
<u>Rose v. State</u> , 425 So.2d 521 (Fla. 1982)	8
<u>State v. Waters</u> , 436 So.2d 66 (Fla. 1983)	4
<u>OTHER AUTHORITIES</u>	
<u>Florida Constitution</u> Article 5, Section 3	4

PRELIMINARY STATEMENT

Petitioner was the prosecution in the Circuit Court and Appellee in the Fourth District Court of Appeal. Respondent was the defendant in the Circuit Court and the Appellant in the Fourth District Court of Appeal. A copy of the opinion of the Fourth District Court of Appeal is attached (Appendix).

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case with the following additions and/or corrections:

The information charged that the Respondent had the intent to commit theft during the burglary (R419).

STATEMENT OF THE FACTS

Respondent, accepts Petitioner's Statement of the Facts, for the purposes of jurisdiction, in so far as it is not argumentative.

SUMMARY OF THE ARGUMENT

Respondent respectfully requests this Honorable Court to decline to take jurisdiction of this case. The opinion of the Fourth District Court of Appeal is based on the long established legal principle that every element alleged in the charging document must be proven beyond a reasonable doubt. Booker v. State, 397 So.2d 910,915 (Fla. 1981); Davis v. State, 326 So.2d 196 (Fla. 4th DCA 1976). This Honorable Court's opinion in State v. Waters, 436 So.2d 66 (Fla. 1983) reaffirmed this principle, as to the requirement of intent to commit an offense within the structure.

Of course, such intent, along with the other elements, must then be proved beyond a reasonable doubt in order for a verdict of guilt and judgment thereon to be proper.

436 So.2d at 46

The opinion of the Fourth District Court of Appeal, in the present case, is consistent with the established law of this state and should be left undisturbed.

The second issue which Petitioner attempts to utilize to invoke the jurisdiction of this Honorable Court contains absolutely no basis for the invocation of jurisdiction. This Honorable Court may only hear cases pursuant to discretionary review which "expressly and directly conflict" with a decision of another District Court of Appeal or of this Honorable Court. Article 5, Section 3 Florida Constitution. The District Court of Appeal's opinion, on this issue, does not conflict with any other opinion. The Court stated that there was "absolutely no evidence" of intent to commit theft. (Appendix at 3).

Petitioner has cited no Florida case holding that a defendant may be convicted when there is "absolutely no evidence" to maintain a conviction as to one element of the offense.

ARGUMENT

POINT I

THE DISTRICT COURT OF APPEAL CORRECTLY HELD THAT THE PROSECUTION MUST PROVE EVERY ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT.

Respondent acknowledges that the opinion in the present case conflicts with the opinion in L.S. v. State, 446 So.2d 1148 (Fla. 3rd DCA 1984). Thus, this Honorable Court may review this case. However, there is no compelling need for this Honorable Court to review this case.

The opinion of the Fourth District Court of Appeal is based on the long established legal principle that every element alleged in the charging document must be proven beyond a reasonable doubt. Booker v. State, 397 So.2d 910, 915 (Fla. 1981); Davis v. State, 326 So.2d 196 (Fla. 4th DCA 1976). This Honorable Court's opinion in State v. Waters, 436 So.2d 66 (Fla. 1983) reaffirmed this principle, as to the requirement of intent to commit an offense within the structure.

Of course, such intent, along with the other elements, must then be proved beyond a reasonable doubt in order for a verdict of guilt and judgment thereon to be proper.

436 So.2d at 46.

The opinion of the Fourth District Court of appeal, in the present case, is consistant with the established law of this state and should be left undisturbed.

This Honorable Court has already taken jurisdiction of L.S., supra. Thus, the legal issue involved here will be resolved. Respondent contends that this issue will be resolved adversely to Petitioner. There is no need to accept jurisdiction of this case, as it is consistent with long-established Florida law.

POINT II

THE DISTRICT COURT OF APPEAL'S DECISION DOES
NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY
OTHER DECISION

The District Court of Appeal reversed Respondent's conviction as there was "absolutely no evidence" of intent to commit theft. (Appendix at 3). Petitioner maintains that this somehow conflicts with Rose v. State, 425 So.2d 521 (Fla. 1982). However, there is nothing in Rose stating that a verdict of guilt may stand where there is "absolutely no evidence" to support it: Thus, this issue forms no basis for the invocation of jurisdiction.

CONCLUSION

Respondent respectfully requests this Honorable Court to decline to review the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Marlyn Altman, Assistant Attorney General, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida, 33401, this 4th day of February, 1985.

Richard B. Greene
Of Counsel