

Supreme Court of Florida

No. 66,428

STATE OF FLORIDA, Petitioner,

v.

JOSEPH CURTIS SMITH, Respondent.

[March 6, 1986]

ADKINS J.

We accepted for review the decision in Smith v. State, No. 84-326 (Fla. 4th DCA Dec. 28, 1984), to determine the following issue: Whether the state may attempt to establish the element of intent in a burglary prosecution by use of the presumption of intent statute section 810.07, Florida Statutes, where the charging document alleged that the defendant entered with the intent to commit a specified offense.

We determined this issue in L. S. v. State, 464 So.2d 1195 (Fla. 1985).

On May 29, 1985, the Fourth District Court of Appeal granted the state's motion for stay of mandate and based on this Court's opinion in L.S. v. State withdrew the opinion filed in the instant case in Smith v. State, and affirmed the judgment of the trial court.

Upon motion of the state, this cause is dismissed.

It is so ordered.

BOYD, C.J., and OVERTON, McDONALD, EHRLICH and SHAW, JJ., Concur

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

Application for Review of the Decision of the District Court of
Appeal - Direct Conflict of Decision

Fourth District - Case No. 84-326

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