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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 78,872

COREY L. STEPHENS,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

PETITIONER'S BRIEF ON THE MERITS

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AUTHORITIES CITED

CASES:

PAGES:

Anderson v. State,
415 So.2d 829 (Fla. 3rd DCA 1982).....8

Bragg v State,
371 So.2d 1082 (Fla. 4th DCA 1979).....5

G.D. v. State,
557 So.2d 123 (Fla. 3rd DCA 1990).....6

People v. Mullinex,
125 Ill. App.3d 87, 465 N.E.2d 135 (Ill.App.Ct. 1984)..6,7

People v. Steppan,
105 Ill.2d 310, 473 N.E.2d 1300 (Ill. 1985).....6,7

State v. Dalby,
361 So.2d 215 (Fla. 2d DCA 1978).....2,4,5,6

State v. Hankins,
376 So.2d 285 (Fla. 5th DCA 1979).....5-6

State v. Harley,
362 So.2d 379 (Fla. 2d DCA 1978).....6

State v. Stephens,
16 FLW 1512 (Fla. 5th DCA June 6, 1991).....passim

State v Stephens,
16 FLW 2686 (Fla. 5th DCA October 17, 1991).....2

Williams v. State,
502 So.2d 1307 (Fla. 3rd DCA 1987),
aff'd 517 So.2d 681 (Fla. 1988).....9

OTHER AUTHORITIES

Art. V, §(3)(b)(3), Fla. Const.....4

Art. V, §(3)(b)(4), Fla. Const.....4

Section 810.02(1), Florida Statutes (1987).....4

Section 910.05, Florida Statutes (1987).....9

STATEMENT OF THE CASE AND FACTS

On May 3, 1989, the State Attorney for the Eighteenth Judicial Circuit filed a Second Amended Information against the respondent in this matter, Corey Lamar Stephens, in case no. G88-2302-CFA. (Appendix A) That Second Amended Information charged Mr. Stephens with having committed four offenses in Seminole County on May 8, 1988. Counts I, III and IV, respectively, charged him with grand theft of a Pontiac automobile,¹ failure to stop that vehicle at a police officer's behest,² and criminal mischief "by driving [the Pontiac] into a sprinkler system, a sign and hedges."³ Count II charged Mr. Stephens with having burglarized the car in Seminole County by remaining in it with the intention to commit theft or with the intention to flee a police officer. Mr. Stephens and an accomplice stole the car in Daytona Beach; a high-speed chase in that car resulted in Mr. Stephens's capture in Seminole County. State v. Stephens, 16 FLW 1512, 1514 (Fla. 5th DCA June 6, 1991) (Sharp, J., dissenting). (Appendix C)

A jury found Mr. Stephens guilty of Count II and not guilty of Counts I, III, and IV. The trial court, after the verdict, entered a judgment of acquittal on the burglary count, finding that

¹ In violation of Sections 812.014(1) and 812.014(2)(c)(4), Florida Statutes (1987).

² In violation of Section 316.1935, Florida Statutes (1987).

³ In violation of Sections 806.13(1)(a) and 806.13(1)(b)(3), Florida Statutes (1987).

although the facts show that the burglary, the entering of the vehicle, occurred in Volusia County, and although there was evidence that the vehicle was driven into Seminole County, the argument was made that an offense can occur in more than one county, and the law is clear an offense can occur in more than one county. But after further deliberations, it's the opinion of the Court that burglary is not a crime of continuing character and therefor [sic] the burglary itself occurred in Volusia County and the Court therefor [sic] would not have had venue and therefor [sic] order the Judgment of Acquittal as to the count of burglary.

(See Appendix B) The state appealed the trial court's order granting judgment of acquittal on Count II. The District Court of Appeal for the Fifth District, en banc, affirmed that order, acknowledging disagreement with State v. Dalby, 361 So.2d 215 (Fla. 2d DCA 1978). Four judges dissented. Stephens, supra. The district court granted the state's motion for clarification, certifying the following question as one of great public importance:

IS BURGLARY OF A CONVEYANCE PROVED
WHEN THE EVIDENCE SHOWS THAT THE
ACCUSED ENTERED THE CONVEYANCE FOR
THE SOLE PURPOSE OF STEALING IT,
RATHER THAN COMMITTING SOME OTHER
OFFENSE THEREIN?

State v. Stephens, 16 FLW 2686 (Fla. 5th DCA October 17, 1991).

The state timely filed a notice seeking discretionary review by this court of the district court's decision.

SUMMARY OF ARGUMENT

Point One: The question certified by the district court in this case has been answered in the affirmative by the Second District Court of Appeal. The state submits that the Second DCA correctly decided the issue. Nothing in the plain wording of the burglary statute suggests that entering, or remaining in, a conveyance with intent to commit an offense is burglary *unless* the offense intended is theft of the conveyance.

Point Two: The trial court effectively ruled, when granting the respondent's motion for judgment of acquittal on the burglary charge against him, that as a matter of law the burglary was complete for all purposes as soon as the car was entered. The Third District Court of Appeal has held that a defendant may unlawfully enter, then unlawfully remain in, a conveyance. The state submits that the Third DCA is correct on this point, since nothing in the plain language of the burglary statute suggests anything to the contrary. The district court, accordingly, erred by affirming the trial court's order.

ARGUMENT

POINT ONE

THE CERTIFIED QUESTION⁴ SHOULD BE
ANSWERED IN THE AFFIRMATIVE.

The respondent, Corey Stephens, broke into and stole a car in Volusia County, and led police officers on a high-speed chase into Seminole County in that car. State v. Stephens, 16 FLW 1512, 1514 (Fla. 5th DCA June 6, 1991) (Sharp, J., dissenting). He was charged with having burglarized the car in Seminole County by remaining in it with the intent either to steal it or to elude police officers in it. The trial court--after a guilty verdict was entered by a jury--granted a motion for judgment of acquittal on that count, ruling, in effect, that as a matter of law the burglary was complete for all purposes when the entry was completed. (See Point II infra). The district court, 5-4, affirmed that order, holding that the trial court had ruled correctly but had given the wrong reason for doing so since "[i]n fact, no burglary occurred at all." Stephens at 1512.

Section 810.02(1), Florida Statutes (1987), states that

"Burglary" means entering or remain-
ing in a structure or conveyance
with the intent to commit an offense
therein, unless the premises are at

⁴ This court, by its November 1, 1991 order, postponed its decision on jurisdiction in this matter. The state submits that this court has jurisdiction not only pursuant to Art. V, §(3)(b)(4), Fla. Const., to review a decision passing on a question certified by the district court to be of great public importance, but that it also has jurisdiction, pursuant to Art. V, §(3)(b)(3), Fla. Const., to review the district court's decision since it expressly and directly conflicts with the Second District's decision in State v. Dalby, 361 So.2d 215 (Fla. 2d DCA 1978). See Stephens, 16 FLW at 1512.

the time open to the public or the defendant is licensed or invited to enter or remain.

The majority of the members of the district court held that

the statutory reference to intent to commit an offense within a conveyance must be construed to encompass only offenses which can be committed, and completed, within the confines of the conveyance itself, e.g., theft or destruction of personal property located inside the conveyance or a criminal offense directed against a person situated inside the conveyance--i.e., assault, battery, rape or murder.... Neither grand theft of a vehicle nor fleeing from a police officer in that stolen vehicle is an offense committed within the vehicle.

Stephens at 1512. In reaching its conclusion, the majority relied solely on State v. Hankins, 376 So.2d 285 (Fla. 5th DCA 1979), and acknowledged its disagreement with State v. Dalby, 361 So.2d 215 (Fla. 2d DCA 1978). The petitioner submits that Hankins is distinguishable and that Dalby is correct.

In Hankins, the state appealed an order dismissing a charge of burglary of a conveyance. Mr. Hankins was seen removing hubcaps from an automobile. The state argued that since the burglary statute provides that "'to enter a conveyance' includes taking apart any portion of the conveyance," Mr. Hankins had burglarized the car. Associate Judge McDonald, writing for the court, emphasized that the accused must not only enter the conveyance but must do so with intent to commit a felony therein, distinguishing Bragg v. State, 371 So.2d 1082 (Fla. 4th DCA 1979) (opening hood of car to remove battery is entry with requisite

intent). Hankins does not support the Fifth District's decision in this case: Mr. Stephens entered and remained in the car with intent to commit the offenses of theft and eluding an officer.

The Second District Court of Appeal, in State v. Dalby, supra, answered the question which has been certified in this case in the affirmative, holding that

[t]he fact that the entire vehicle must move for the larceny to occur is irrelevant....The law clearly requires that the legislative intent be determined primarily from the language of the statute the Legislature must be assumed to know the meaning of words and to have expressed its intent by the use of the words found in the statute. Here there is no ambiguity in the language of the statute. Burglary occurs when there is entering with intent to commit *any* offense.

361 So.2d at 216 (internal citations and punctuation omitted). Accord State v. Harley, 362 So.2d 379 (Fla. 2d DCA 1978); People v. Steppan, 105 Ill.2d 310, 473 N.E.2d 1300 (Ill. 1985) (construing statute defining burglary as "knowingly enter[ing] or without authority remain[ing] within a...motor vehicle...with intent to commit therein a felony or theft"); People v. Mullinex, 125 Ill. App. 3d 87, 465 N.E.2d 135 (Ill.App.Ct. 1984) (same). See also G.D. v. State, 557 So.2d 123 (Fla. 3rd DCA 1990) (evidence sufficient to sustain conviction for burglary of an automobile; defendant entered or remained without consent with intent to commit auto theft).

For the reasons announced by the Second District Court of Appeal in Dalby, supra, and by the Illinois appellate courts in

Steppan and Mullinex, supra, the certified question should be answered in the affirmative.

POINT TWO

THE DISTRICT COURT ERRED BY AFFIRMING THE TRIAL COURT'S ORDER GRANTING THE RESPONDENT'S MOTION FOR JUDGMENT OF ACQUITTAL ON COUNT II.

The trial court, by granting the respondent's motion for judgment of acquittal on Count II, effectively ruled that as a matter of law, the burglary of the car in this case was complete for all purposes when the respondent and his accomplice entered the car in Volusia County. (See Appendix B) The petitioner submits that this ruling was incorrect, and that the district court accordingly erred by affirming the order.

In Anderson v. State, 415 So.2d 829 (Fla. 3rd DCA 1982), the district court affirmed a conviction for "remaining in" a conveyance with intent to commit a crime. Mr. Anderson was observed by police officers "for at least one minute's interval with his head, shoulders, and forearms inside the engine compartment of a hoodless Mustang....One of the officers actually observed the defendant take the radiator from the engine compartment." Id. at 830. The district court noted that Mr. Anderson could equally well have been convicted, on those facts, of burglarizing the Mustang by unlawful entry. Id. at n.1.

The petitioner submits that the holding of Anderson is correct and that the same reasoning should be applied in the present case. Mr. Stephens both unlawfully entered and unlawfully remained in the Pontiac; the statute suggests no impediment to prosecuting him for committing either act, wherever that act took place. The unlawful "remaining in" the Pontiac took place, in

part, in Seminole County and was properly prosecuted there. See §910.05, Fla.Stat. (1987) (where acts constituting one offense committed in two counties, defendant may be tried in either county). See generally Williams v. State, 502 So.2d 1307 (Fla. 3rd DCA 1987), aff'd 517 So.2d 681 (Fla. 1988) (although burglary is complete at the moment of entry in that the state has all it needs to convict, it does not follow that burglary is therefore complete for all purposes; sentence properly enhanced where defendant arms self during burglary).


The district court's decision affirming the trial court's order granting judgment of acquittal on Count II should be reversed.

CONCLUSION

The petitioner requests this court to answer the certified question in the affirmative. The petitioner further requests this court to quash the decision of the district court, and to remand this case to the trial court for entry of a judgment of conviction and imposition of sentence on Count II charged against the Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished by hand delivery to Daniel J. Schafer, Assistant Public Defender, of 112 Orange Avenue, Suite A, Daytona Beach, Florida, 32114, at the Public Defender's in-basket at the Fifth District Court of Appeal, this 26th day of November, 1991.



NANCY RYAN
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INDEX TO APPENDIX

Information, case no. G88-2302-CFA	Appendix A
Transcript of June 19, 1989 hearing	Appendix B
<u>State v. Stephens</u> , 16 FLW 1512 (Fla. 5th DCA June 6, 1991)	Appendix C