IN THE SUPREME COURT OF FLORIDA



CONNIE FAYE LINCOLN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 64,816

# RESPONDENT'S ANSWER BRIEF ON THE MERITS

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## TOPICAL INDEX

## AUTHORITIES CITED

## ISSUE PRESENTED

THE STANDARD FOR REVIEWING A DENIAL OF A MOTION FOR JUDGMENT OF ACQUITTAL AND APPLICATION OF SAID STANDARD BY THE FIFTH DISTRICT COURT OF APPEAL IN THIS CASE, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DISTRICT COURT DECISIONS IN GAINS v. STATE, 417 So.2d 719 (Fla. 1st DCA 1982), AND A. Y. G. v. STATE, 414 So.2d 1158 (Fla. 3d DCA 1982).

## ARGUMENT

The decision in the instant case expressly and directly conflicts with the decision of the First District Court of Appeal in Gains v. State, 417 So.2d 719 (Fla. 1st DCA 1982), and that of the Third District Court of Appeal in A. Y. G. v. State, 414 So.2d 1158 (Fla. 3d DCA 1982). Respondent submits that the State is not required to disprove every possible hypothesis of innocence. Respondent further submits that the jury in the present case rejected as unreasonable Petitioner's hypothesis of innocence, and the Fifth District Court of Appeal correctly refused to substitute its judgment for that of the trier-of-fact.

In State v. Allen, 335 So.2d 823 (Fla. 1976), this Court stated that:

> We are well aware that varying interpretations of circumstantial evidence are always possible in a case which involves no eyewitnesses. Circumstantial evidence, by its very nature, is not free from alternate interpretations. The state is not obligated to rebut conclusively every possible variation, however, or to explain every possible construction in a way which is consistent only with the allegations against the defendant. Were

> those requirements placed on the state for these purposes, circumstantial evidence would always be inadequate to establish a preliminary showing of the necessary elements of a crime.

335 So.2d at 826 (emphasis added).

Under Petitioner's argument, the prosecution would have to rule out every hypothesis except that of guilt beyond a reasonable doubt. This argument was rejected by the United States Supreme Court in Holland v. United States, 348 U.S. 121, 140, 75 S.Ct. 127, 137, 99 L.Ed. 150 (1954), and this Court should decline to adopt it today and approve the decision of the Fifth District Court of Appeal. In Holland, the Court stated that:

> Circumstantial evidence in this respect is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Id. at 348 U.S. 140, 75 S.Ct. 137-138. See also, Jackson v. Virginia, 443 U.S. 307, 326, 99 S.Ct. 2781, 2793, 61 L.Ed.2d 560 (1979).

Petitioner, in her direct appeal, asked the Fifth District Court of Appeal to review the denial of her motion for judgment of acquittal based upon her claim that the evidence was insufficient to sustain the robbery conviction. The district

court affirmed the ruling of the trial court. In reviewing a claim of insufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution, drawing all reasonable inferences therefrom. Glasser v. United States, 313 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942); United States v. Kincade, 714 F.2d 1064 (11th Cir. 1983); Spinkellink v. State, 313 So.2d 666, 670 (Fla. 1975).

In Kincade, the court stated that the standard of review for a sufficiency of the evidence challenge is that:

> It is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier-of-fact could find that the evidence establishes guilt beyond a reasonable doubt. A jury is free to choose among reasonable constructions of the evidence.

714 F.2d at 1066. United States v. Bell, 678 F.2d 547, 549 (5th Cir. Unit B 1982) (en banc), affirmed, 51 U.S. L.W. 4749 (June 13, 1983).

The decision of the Fifth District Court of Appeal was consistent with the decisions of other district courts of appeal that:

> It is not the function of an appellate court to re-try the case or to substitute its judgment for that of the jury
> . . .
> In performing this function the appellate court in order to give the proper weight to a jury verdict approved by the trial court must assume that the jury believed that credible testimony most damaging to the defendant and drew from the facts established those reasonable conclusions most unfavorable to the defendant.

(emphasis added)

Parrish v. State, 97 So.2d 356, 357-358 (Fla. 1st DCA 1957). See also, Crum v. State, 172 So.2d 24, 25 (Fla. 3d DCA 1965).

In his concurring opinion, Judge Dauksch set out the pertinent facts that the court felt were legally sufficient to convict under Tibbs v. State, 397 So.2d 1120 (Fla. 1981):

> Appellant's husband had asked appellant before the robbery to drive him "some different places, that he had to make some money. And I asked him, I said are you talking about robbery? And he says, well, either that or a drugstore where I can get some drugs so I won't have to spend any money, you know, to go buy some. And I told him I didn't want any part of it, you know, I didn't wanna be stealing nothing and I didn't wanna be any part of that at all. And that's when he said you're my wife, you're my legal wife. He said, yes, you are taking me to go in, you are going with me. So, I, that's when we left, just started driving up and down the street." Later, "He told me, he said, park the car here. He didn't tell me he was going to rob it." She parked the car in front of the drugstore while her husband went in and robbed the store at gunpoint. When he came out of the store she drove the car some four miles with the police in pursuit. That is enough evidence for the jury to decide whether she is guilty as a principal to armed robbery. Her husband told her he was going to commit a robbery, told her to drive the car. She did.

(Dauksch, J., concurring specially) [slip opinion at 3.]

Respondent contends that the facts in evidence in the instant case were stronger proof of guilt than those in A. Y. G. v. State, 414 So.2d 1158 (Fla. 3d DCA 1982), and Gains v. State, 417 So.2d 719 (Fla. 1st DCA 1982). the Respondent submits that the evidence in the instant case was consistent with the hypothesis of guilt and inconsistent with any reasonable hypothesis

of innocence. Mrs. Lincoln could have left her husband after he went into the store. She did not. Instead, she stayed and drove for some four miles in an attempt to elude the police. The jury could reasonably conclude and did so conclude from the evidence presented at trial that Petitioner was waiting in the vehicle to help her husband escape from the robbery with drugs and/or money to buy drugs.

Contrary to the court in Gains, the Fifth District correctly refused to make inferences favorable to the accused, that the jury declined to make. Accordingly, this Court should approve the decision of the Fifth District in the instant case and quash the opinion of the First District in Gains and that of the Third District in A. Y. G. v. State, inasmuch as the State is not obligated to rebut conclusively every possible variation, or to explain every possible construction of the evidence, in a way which is consistent only with the allegations against the defendant. State v. Allen, 335 So.2d 823, 826 (Fla. 1976).

Accordingly, this Court should affirm and approve the decision of the Fifth District in the instant case and quash the decisions in Gains v. State, and A. Y. G. v. State.

## CONCLUSION

Based upon the foregoing arguments and citations of authority, Respondent respectfully submits that this Court should affirm the decision of the Fifth District Court of Appeal in this cause.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Answer Brief on the Merits has been furnished, by delivery, to Larry B. Henderson, Assistant Public Defender for Petitioner, 1012 South Ridgewood Ave., Daytona Beach, Florida 32014-6183, this 12th day of March, 1984.

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