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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
Petitioner,)
vs.) CASE NO.: 64,977
MCKINLEY O'NEAL,)
Respondent.)

PETITIONER'S AMENDED BRIEF ON THE MERIT

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OTHER AUTHORITY

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
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vs.	)	CASE NO.: 64,977
MCKINLEY O'NEAL,	)	
Respondent.	)	

PRELIMINARY STATEMENT

The parties in this brief will be referred to as follows: The State of Florida, the prosecution in the trial court and the Appellee in the Court of Appeal, First District, is now referred to as the Petitioner; McKinley O'Neal, defendant in the trial court and Appellant in the appellate court, is now Respondent and will be referred to by name or as Respondent.

The record on appeal forwarded by the District Court record volume which will be referred to by the symbol "R" followed by the appropriate page number(s) and a single volume of transcript contains the trial court proceedings before the Honorable Henry Lee Adams, Circuit Court Judge. This volume will be referred to by the symbol "T" followed by the appropriate page number(s).

Petitioner directs attention to State v. Phillips, No. 64,547 and State v. Donald, No. 64,652, currently pending review by this Court in which similar and related certified questions are presented. (See, footnote 8, infra.).

The opinion of the Court of Appeal, First District, is appendixed hereto; however, the case is now reported as follows:

O'Neal v. State, 444 So.2d 1142
(Fla. 1st DCA 1984)

This Amended brief is submitted to correct references to O'Neal as Petitioner as pointed out in the Answer Brief on Respondent. The misnomer was inadvertent, but does create confusion as noted by O'Neal. The State apologizes for inconvenience to opposing counsel and submits this corrected brief for the convenience of the Court.

The only other amendments appear on page 6, supra in which reference to a case cited in the district court's opinion is corrected and on pages 4 and 5 where reference to the June 6, 1977 transcripts is clarified. See accompanying motion for leave to file an amended initial brief.

STATEMENT OF THE CASE AND FACTS

McKinley O'Neal was charged by information dated February 25, 1983 with felony petit theft arising from the January 16, 1983 theft of less than one hundred dollars from the Winn Dixie Stores, Inc. in Jacksonville, Florida. (R1) The information was captioned "FELONY PETIT THEFT" and referred in the text to a violation of Section 812.014(2)(c), Florida Statutes. Id.

O'Neal was arrested on February 28, 1983, pursuant to a capias (presumably based on the previously filed information). (R 2) First appearance was conducted on the same day and the Public Defender was appointed to provide legal representation. (R 3) At arraignment on March 7, 1983, the State served a Notice of Intent to Seek Felony Petit Theft Sentence" and relied upon two prior petit theft convictions. (R 4) One prior conviction was entered on December 19, 1974 and the other conviction entered on January 4, 1977. Id. Formal discovery motions were subsequently filed to which the State promptly responded. (R 5-10)

Prior to the initial trial date, the State moved for continuance and sought leave to clarify O'Neal's prior convictions for petit theft and felony petit theft. (R 11, 14, 16, 19) See, T 5-13. The State informed the trial court that O'Neal's had previously been convicted of felony petit theft and sought leave to meet the requirement of two prior petit theft convictions with the prior felony petit theft conviction. Id. (T 6) The State noted that O'Neal had a record of petit thefts dating back to September 26, 1955.

(R 11) The State sought O'Neal fingerprints in order to identify those prior convictions. (R 14) Through fingerprints, it was established that O'Neal was also known as O'Neal McKinley. (R 16) On May 18, 1983, Petitioner filed notice of intent to seek a felony petit theft sentence in the instant case based on two prior theft convictions both dated June 8, 1977. (R 19)[1]

On May 17, 1983, O'Neal filed a one paragraph motion to dismiss relying upon Rule 3.190(b), Florida Rules of Criminal Procedure. This motion alleged that the circuit court was without jurisdiction to hear the cause as the text of the charging document alleged deprivation of property valued at less than $100, which is a misdemeanor offense. (R 20)

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[1] In the First District Court of Appeal, there are several cases pending which attack jurisdiction of the circuit court to preside over a felony petit theft conviction which is premised upon prior petit theft convictions allegedly obtained by invalid pleas to the misdemeanor offenses. Allen v. State, No. AT-461; Boggs v. State, No. AS-256; State v. Sheffield, No. AT-299; State v. Brookins, No. AT-311. The defendants routinely argue that the petit theft pleas are invalid as they were obtained in violation of the procedural requirements of Rule 3.172, Florida Rules of Criminal Procedure, and thus were involuntarily and/or unknowingly entered. At no time have the defendants raised the involuntariness of their pleas in the misdemeanor cases, either directly or by collateral means. Instead, each defendant seeks to invalidate the misdemeanor plea for purposes of "enhancement" in a collateral proceeding while never challenging the plea in the substantive case itself. It was to circumvent this defense argument that the State sought to amend the Notice of Intent with prior convictions different from those originally set forth. (T 5-13)

On May 23, 1983, O'Neal also moved to quash the May 18, 1983 Notice to Intent to seek felony petit theft sentence stating that the State's second notice constituted a fundamental and substantial alteration of the charge against him. (R 32) O'Neal argued that the State could not fundamentally alter the particulars of the essential elements of the charge in the manner selected. (R 32-3) Hearing on the Motion to Quash was heard on May 23, 1983 and the motion was denied. (T 14-15) Transcripts of the June 6, 1977 plea entry in cases 77-1799-CFA and 77-1800-CFA were filed at this hearing. (R 21-31; T 14) These cases were relied upon by the State for the underlying convictions. T 14

At this same hearing, O'Neal entered into a negotiated plea bargain whereby he agreed to enter a plea of nolo contendere to the charge and specifically reserved the right to appeal the legal sufficiency of use of the particular convictions as the basis for the enhancement. O'Neal also reserved the right to appeal the denial of the motion to dismiss based on jurisdiction. (T 15; R 36) Pursuant to the negotiated agreement, O'Neal was adjudicated guilty and sentenced to imprisonment in the Department of Corrections for thirteen (13) months. (T 21; R 37-41) Credit was given for eighty-four (84) days spent in the Duval County Jail. Id.

Notice of appeal was filed on June 7, 1983. (R 44) Representation was provided by the Office of the Public Defender for the Second Judicial Circuit. Respondent's initial brief was filed on

November 8, 1983. Prior to the filing of the State's answer brief, the Court of Appeal for the First District, entered an opinion in the case of Phillips v. State, 438 So.2d 886 (Fla. 1st DCA 1983) certified on rehearing (October 28, 1983). Thereafter, the First District entered an opinion in Pickelsimer et. al. v. State, 440 So.2d 47 (Fla. 1st DCA 1983). On the basis of Phillips and Pickelsimer, Petitioner moved for summary reversal in the appellate court. The State was ordered to show cause why the relief should not be granted.

On February 8, 1984, the First District entered its opinion summarily reversing this cause. O'Neal v. State, 444 So.2d 1142 (Fla. 1st DCA 1984). Reversal was predicated upon Phillips and Donald v. State, 442 So.2d 271 (Fla. 1st DCA 1983). In its opinion, the First District certified the instant question as one of great public importance. See p.7, infra.

Notice to invoke discretionary jurisdiction pursuant to Rules 9.030(a)(2)(v) and 9.120, F.R.App.P. was filed on February 29, 1984. A motion to stay proceedings in the circuit court was filed in this Court on March 20, 1984. An Order on that motion has not been entered as of the filing of this brief.

This brief on the merit follows.

QUESTION CERTIFIED

The Court of Appeal, First District, certified the following as a question of great public importance pursuant to Rules 9.030(a) (2)(v) and 9.120 F.R.App.P.

> Is a circuit court deprived of subject-matter jurisdiction when the caption of the charging document charges the defendant[s] with felony petit theft and the body thereof cites the proper Florida Statute, §812.014(2)(c), but the text of the charge alleges the value of the property to be less than $100 and does not specify the substantive elements of two prior theft convictions?

O'Neal v. State, 444 So.2d 1142, 1143 (Fla. 1st DCA 1984).

STATUTE INVOLVED

The statute involved in the appeal is Florida's Felony Petit Theft Statute which states:

> Theft of any property not specified in paragraph (a) or paragraph (b) is petit theft and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction for petit theft, the offender shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction for petit theft, the offender shall be guilty of a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

Section 812.014(2)(c), Florida Statutes.

POINT ON APPEAL

THE INFORMATION PROPERLY CHARGED THE OFFENSE OF FELONY PETIT THEFT AND THE CIRCUIT COURT PROPERLY ACQUIRED JURISDICTION OVER THE CAUSE

ARGUMENT

In this cause the charging document cited the Felony Petit Theft statute[2] and the information was captioned "Felony Petit Theft". (R 1). However, the text of the charging paragraph alleged value of the property at less than $100.00 and did not specify the prior convictions. Id. O'Neal argued that these omissions meant that only a misdemeanor was charged; thus, the circuit court never acquired jurisdiction to hear the case. (R 20) A brief one paragraph motion to dismiss was filed which contained as an appendix a transcript of the June 7, 1977 plea entry in criminal cases 77-1179 and 77-1800 CFA (R 20-31) O'Neal cited no legal authority in support of his position. R 20 The motion was denied by the trial court. (R 35)

In summarily reversing this cause, the Court of Appeal, First District, relied upon its earlier opinions in Phillips v. State, 438 So.2d 886 (Fla. 1st DCA 1983) and Donald v. State,[3] 442 So.2d 271 (Fla. 1st DCA 1983). The opinion in this cause did not restate the legal reasoning or authority previously set forth in those cases. See,

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2 Section 812.014(2)(c), Florida Statutes.

3 On rehearing, questions were certified in both Phillips and Donald and are currently pending review on the merit in this Court. State v. Phillips, No. 64,547; State v. Donald, No. 64,652. (See, footnote 8, infra).

O'Neal v. State. In Phillips v. State, the Court of Appeal reasoned that the circuit court had felony jurisdiction over a "petit theft" "only if a conviction upon the charge laid in the information would be the offender's 'third or subsequent conviction for petit theft'". Phillips v. State at 887. The majority opinion emphasized that notice of the nature of the charges had been provided to the accused, albeit imperfectly, by the caption of the information and filing of the Notice of Intent to Seek a Felony Petit Theft Penalty[4] based upon two prior petit theft convictions.[5] The pertinent portion of the district court's opinion is as follows:

> . . . the charging part of the information simply alleged a petit theft violation of section 812.014(2)(c) in that Phillips on a certain date, in Duval County,
>
> > did knowingly obtain or use, or endeavor to obtain or use merchandise, valued at less than One-Hundred Dollars ($100.00), the property of Winn Dixie Stores, Incorporated, a corportion [sic], with intent to appropriate the property to her use or to the use of any person not entitled thereto, contrary to the provisions of Section 812.014(2)(c), Florida Statutes.
>
> Omitting reference in the information to Phillips' two prior convictions for petit theft, the state attorney obviously interpreted State v. Harris, 356 So.2d 315 (Fla. 1978), as authorizing or requiring that omission from the charging language in order to avoid the prejudice of revealing the allegation or fact of prior convictions to the trial jury. But Harris appears not to license that omission from the charging document, but only to require a separate post-verdict determination of prior convictions by the circuit judge.

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4 The State emphasizes that in addition to these two factors, the text of the information cited a violation of Section 812.014(2)(c), Florida Statutes, which pertains to Felony Petit Theft.

5 Notice of the prior offenses was provided on the day of arraignment and was subsequently amended. (R 19)

> To omit the historical fact of prior convictions from the charging language of an information such as this is to charge only a petit theft, and is said to be a jurisdictional defect, not merely an imperfection in a felony charge that must be challenged by proper motion or else is waived.
>
> Christopher v. State, 397 So.2d 406 (Fla. 5th DCA 1981) [information captioned "Grand Theft" under §812.014(2)(c)]; Brehm v. State, 427 So.2d 825 (Fla. 3d DCA 1983) [information charging §877.08 violation without alleging prior conviction for same offense]; see also State v. Black, 385 So.2d 1372 (Fla. 1980) [venue]; Pope v. State, 268 So.2d 173 (Fla. 2d DCA 1972), cert. denied, 283 So.2d 99 (Fla. 1973); Page v. State, 376 So.2d 901 (Fla. 2d DCA 1979); Waters v. State, 354 So.2d 1277 (Fla. 2d DCA 1978); Dicaprio v. State, 352 So.2d 78 (Fla. 4th DCA 1977), cert. denied, 353 So.2d 679 (Fla. 1977); Boley v. State, 273 So.2d 109 (Fla. 4th DCA 1973), cert. denied, 287 So.2d 668 (Fla. 1973); but cf. Peek v. Wainwright, 393 So.2d 1175 (Fla. 3d DCA 1981).

Phillips v. State at 887-888.

In State v. Harris, 356 So.2d 315 (Fla. 1978), this Court addressed Section 812.014(2)(c), Florida Statutes, and declared it a "substantive offense". Id. at 316. The opinion stated:

> Section 812.021(3) provides in pertinent part, that upon the third or subsequent conviction for petit larceny, the offender shall be guilty of a felony in the third degree (rather than a misdemeanor in the second degree). This statute creates a substantive offense and is thus distinguishable from Section 775.084, the habitual criminal offender statute.

Id. at 316. This Court further concluded that the Florida Legislature had the right to create the substantive offense of "felony petit larceny", but the judiciary possessed the right to "dictate the procedure to be employed in the courts to implement it." Id. at 317 citing Article V, Section 2, Florida Constitution. Considerable

deference has been afforded to the intent of the Florida Legislature in enacting the Felony Petit Theft statute and to this Court's interpretation of that statute as set forth in State v. Harris. See, Peek v. Wainwright, 393 So.2d 1176 (Fla. 3d DCA 1981).

State v. Harris, specifically disavows the procedure advanced on appeal by Respondent and mandated by the district court in its opinion, whereby specific information concerning the prior convictions is contained within the charging document.

> We therefore hold that Section 812.021(3) creates a substantive offense to be tried in the circuit court when felony petit theft is charged, without bringing to the attention of the jury the fact of prior convictions as an element of the new charge. Upon conviction of the third petit larceny, the Court shall, in a separate proceeding, determine the historical fact of prior convictions, and questions regarding identity in accord with general principles of law, and by following the procedure now employed under Section 775.084.

Id. at 317 (emphasis added).

The procedure set forth by this Court is that the fact of prior convictions will not be brought to the jury's attention during trial, but developed in a subsequent, separate hearing. A separate proceeding is necessary so as not to destroy the presumption of innocence in favor of the defendant. Pugh v. State, 423 So.2d 398 (Fla. 1st DCA 1982); State v. Harris at 317. The viability of this logic is readily apparent from the instant case. In Phillips v. State, the First District acknowledged that the similar charging document satisfied the requirement of "notice" of the charges against the

accused. Id. at 887. However, the majority concluded the information was inadequate to confer jurisdiction in the circuit court. Id. at 888. The dissenting opinion of Judge Wentworth did not agree. Id.

Proper jurisdictional allegations are as essential in an accusatory document as are those allegations relating to material elements of a crime. State v. Black, 385 So.2d 1372, 1375 (Fla. 1980). Florida caselaw holds that questions concerning subject matter jurisdiction involve a claim of fundamental error and can be raised at any time - even for the first time on appeal. Christopher v. State, 397 So.2d 406, 407 (Fla. 5th DCA 1981); Waters v. State, 354 So.2d 1277 (Fla. 2d DCA 1978); Dicaprio v. State, 352 So.2d 78, 79 (Fla. 4th DCA 1977) cert. denied 353 So.2d 679 (Fla. 1977); Solomon v. State, 341 So.2d 537 (Fla. 2d DCA 1977); Pope v. State, 268 So.2d 173 (Fla. 2d DCA 1972) rehearing denied. It is the State's position that the information in this case, which tracked the appropriate language,[6] was captioned and cited the "Felony Petit Theft" and cited the controlling statute, Section 812.014(2)(c), Florida Statutes, was sufficient to confer jurisdiction in the circuit court. By citing the Felony Petit Theft Statute and using that caption on the information, the State has incorporated by reference[7] the language of the cited

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[6] Respondent agreed on direct appeal. See initial brief at p.2.

[7] Where an information tracks the language of the statute and refers to a statute, it is generally held sufficient. State v. DiGuillio, 413 So.2d 478, 479 (Fla. 2d DCA 1982); Martinez v. State, 368 So.2d 338 (Fla. 1979); State v. Pajon, 374 So.2d 1070 (Fla. 3d DCA 1979).

section defining felony petit theft. (See dissenting opinion, J. Wentworth, Phillips at 888).

In Jones v. State, 415 So.2d 852 (Fla. 5th DCA 1982), the Fifth District held that if the information recites the appropriate statute alleged to be violated, and if the statute clearly includes the omitted words, it cannot be said that the imperfection of the information prejudiced the defendant in his defense. Id. at 853, see also authority cited therein. Hence Respondent and the circuit court were on notice that the theft described in the information was the "third or subsequent conviction for petit theft". Section 812.014(2)(c), Florida Statutes. The information need not include the specific prior convictions. State v. Harris. Respondent obviously understood the nature of the charge against him and recognized the jurisdictional sufficiency of the information. Further, the trial court did not note a jurisdictional defect as the motion to dismiss was denied. The dissenting opinion of Judge Wentworth in Phillips, fails to detect a "jurisdictional problem" with the procedure used to charge the instant offense.

Interestingly, the charging document in Peek v. Wainwright failed to allege the defendant's prior convictions. Information on the prior offenses was provided by a pretrial notification of enhancement pursuant to Section 775.084, Florida Statutes. Admittedly in Peek, jurisdiction was conferred in the circuit court on the basis of other felony charges and such is not the case here. (Defendant Peek was convicted of petit theft rather than robbery). What is of importance

to this case is the attempt by the Third District Court of Appeal to extend due deference to the intent of the Florida Legislature in enacting the Felony Petit Theft Statute and to this Court's opinion in State v. Harris. It is noteworthy that the prosecutors in this cause (and the others arising from the Fourth Judicial Circuit) and those in Peek v. Wainwright, interpreted State v. Harris to require notice of the prior convictions to be provided pursuant to a Notice of Intent to Enhance similar to Section 775.084, Florida Statutes, rather than by including information of the prior convictions within the charging document which might possibly be presented to the jury.

The First District's reliance upon Christopher v. State, is misplaced. In Christopher, the defendant was charged by an information labeled "Grand Theft" but which charged the theft of merchandise of a value less than one hundred dollars. Subsequently, the State filed notice to prosecute as a subsequent offender pursuant to Section 812.014(2)(c), Florida Statute (1979). The defendant negotiated a plea to attempted grand theft and challenged the circuit court's jurisdiction on appeal. The instant facts are not analogous.

In Christopher, the title of the information read "Grand Theft", not Felony Petit Theft. The text of the charging document alleged a theft of less than $100.00. Thus, the caption (grand theft) was negated by the specific allegation of the amount involved. There was nothing else within the charging document which served to reference the enhancement provisions of the statute defining a felony based on other convictions. Phillips at 888. (J. Wentworth, dissenting).

Furthermore on appeal in Christopher, the State argued the use of the word less was a typographical error; the State intended to charge the defendant with theft or more than $100.00. The Court of Appeal, Fifth District, held the mistake to be fundamental. Accord, Phillips at 888 (J. Wentworth, dissenting). The information charged only a misdemeanor. However, the Fifth District opined that "if the proper procedure is followed, a felony petit charge is sufficient to vest jurisdiction in the circuit court". Christopher at 407.

Judge Upchurch, writing for the District Court in Christopher advised of the proper procedure for the State to pursue:

> Had the State moved to amend the information as it should have done, the substantive offense of felony petit theft would have vested jurisdiction in the circuit court. Not only did the State fail to amend the information, but the proceedings were lacking the safeguards that Harris mandates.

Id. at 407. The State interprets this instruction to require the amendment of the information to allege "Felony Petit Theft" rather than "Grand Theft". No mention is made of adding factual information which would identify the prior convictions. Such action would still be inadequate to divest jurisdiction unless the "Grand Theft" caption was also altered.

Likewise, Brehm v. State, 427 So.2d 825 (Fla. 3d DCA 1983) does not support the First District's position. See, Phillips at 888. In Brehm v. State, the charging document failed to allege the specific statutory provision under which Defendant Brehm was charged. It appeared Brehm was charged and convicted of ten counts of violating Section 877.08(2) and (3), Florida Statutes (1981), Tampering with a

Parking Meter, which is ordinarily a misdemeanor offense. Brehm at 826. However, subsection (4) provides for enhancement to a third degree felony upon prior conviction for the same offense. It was under this subsection that the State intended to charge Brehm in circuit court. However, the information filed did not specify the subsection and referred only to the general statutory provision. Nothing in the charging instrument could be construed to incorporate by reference the provisions of the statute necessary to confer jurisdiction in the circuit court. See Phillips at 888, f.n.1. These are not the facts of this cause and application of the Christopher - Brehm holding is inappropriate. The holding in Brehm would apply in Respondent's case only if the State had charged violation of Section 812.014. However, the instant information specified a violation of subsection (2)(c) and carried a "Felony Petit Theft" caption.

The instant cause differs from those of Phillips and Donald in that Respondent moved to dismiss the information in the trial court. Neither Phillips or Donald filed such a motion in the circuit court. Each raised the issue of jurisdiction for the first time on appeal. The District Court held the alleged defect to be fundamental in nature, therefore the argument could be raised at any time. As stated in our briefs pending before this Court in Phillips and Donald, such legal reasoning overlooks the holding of this Court in State v. King, 426 So.2d 12 (Fla. 1982) as well as earlier opinions of the First District in State v. Cadieu, 353 So.2d 150 (Fla. 1st DCA 1977) and Pickelsimer v. State, 440 So.2d 47 (Fla. 1st DCA 1983).

In the recent opinion of the First District in Pickelsimer et al v. State, identical jurisdictional arguments were submitted by each of the seven defendants represented in that consolidated opinion. As in Respondent case, jurisdiction was raised in the circuit court pursuant to a pretrial motion to dismiss the information and served as the basis for appeal. The First District did not address the jurisdictional aspect. The court refused to "speculate" in Pickelsimer as to the outcome if the defendants had not filed motions to dismiss. Instead the District Court concluded that when timely motions to dismiss raising jurisdictional grounds in the circuit court, the motions should be granted. By raising the issue, the circuit court is put on notice and the defendants are entitled to informations which are not ambiguous in identifying the prior convictions relied upon for the felony charge. In Pickelsimer, the First District stated that the jurisdictional issue presented in Phillips v. State, need not be reached. Pickelsimer at 48.

Although the holding in Pickelsimer is factually more analogous to the instant cause, the District Court reversed Respondent O'Neal's conviction on the authority of Phillips and Donald. It appears that there is some conflict within the court appellate as to the proper manner to charge the offense of felony petit theft.

In conclusion, the State submits the instant information was sufficient to incorporate by reference the language of the cited statutory provision defining felony petit theft so as to inform the accused that he was charged with a third or subsequent conviction for petit theft and to confer jurisdiction in the circuit court. Jones v. State; State v. Gray, 435 So.2d 816, 818 (Fla. 1983); Phillips v. State at 888. (J. Wentworth, dissenting). The State submits the circuit court is not deprived of subject matter jurisdiction when the caption of the charging document charges felony petit theft and the body of the information refers to the proper statutory provision but the text alleges the value of the property to be less than $100 and does not specify the substantive elements of two prior petit theft convictions pursuant to the dictates of State v. Harris. We urge this Court to answer the certified question[8] in the negative thereby reversing the decision of the Court of Appeal, First District.

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[8] The instant certified question is substantially more narrow than the related question certified to this court in Donald v. State,

> In a circuit court deprived of subject-matter jurisdiction when the caption of the charging document charges the defendant[s] with felony petit theft and the body thereof cites the proper Florida Statute, § 812.014(2)(c), but the text of the charge alleges the value of the property to be less than $100 and does not specify the substantive elements of two prior theft convictions?

Id. at 271 State v. Donald, No. 64,652 is currently pending review by this Court. The State submits that the broader question presented in State v. Donald must also be answered in the negative. As should the following question certified in Phillips v. State:

footnote 7 continued

> Whether absent objection or motion to dismiss in the circuit court, the defect found in the charging instrument should be noticed on appeal as jurisdictional.

Id. at 888. This certified question is currently pending before this Court in State v. Phillips, No. 64,547.

CONCLUSION

Based on the foregoing argument, supported by the circumstances and authorities cited herein, Petitioner respectfully maintains that the circuit court is not deprived of subject-matter jurisdiction when the caption of the charging document charges felony petit theft and the body of the information cites the proper Florida Statute, Section 812.014(2)(c), but the text of the charge alleges the value of the property stolen to be less than $100. The certified question should be answered in the negative. Petitioner requests that this Court reverse the decision of the Court of Appeal thereby affirming the judgment and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to the Office of the Public Defender,* Post Office Box 671, Tallahassee, Florida 32301, this 16 day of May, 1984.

Barbara Ann Butler
Assistant Attorney General

BAB/rh
#7 R/S

*Gwendolyn Spivey, Esquire, former counsel of record, is no longer with the Public Defender,