IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
vs.
T.L.J., A CHILD,
Respondent.

Case No. 65,358

RESPONDENT'S BRIEF ON THE MERITS

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

By: Amelia G. Brown
Assistant Public Defender
Courthouse Annex
Tampa, Florida 33602

TOPICAL INDEX AND STATEMENT OF ISSUES

CITATION OF AUTHORITIES

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	)	
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	)	
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	)	
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	)	
	)	

STATEMENT OF THE CASE AND FACTS

Respondent adopts the Statement of the Case and Facts as provided in the Petitioner's Brief on the Merits.

ARGUMENT

WHETHER §810.07 IS APPLICABLE WHEN THE ACCUSATORY DOCUMENT ALLEGES THE SPECIFIC OFFENSE TO BE COMMITTED.

In this case, the Second District Court of Appeal has reaffirmed the conclusion reached in Bennett v. State, 438 So.2d 1034 (Fla. 2d DCA 1983). Its decision was supported by a showing that although T.L.J. was charged with entering a trailer with intent to commit the specific offense of theft, there was insufficient evidence to prove he intended to steal anything while inside the structure.

The appellate court restated its position on this issue and reversed the trial court's delinquency adjudication. That position

is that the state may not rely upon the presumption of section 810.07, Florida Statutes (1981), in regard to nonconsensual stealthy entry, to prove a named offense. T.L.J. v. State, 449 So.2d 1008 (Fla. 2d DCA 1984).

Petitioner submits that Bennett is an incorrect interpretation of this Court's decision in State v. Waters, 436 So.2d 66 (Fla. 1983). It is contended that when an information charges there was an intent to commit a specific offense, §810.07 may be used an an evidentiary alternative to prove the accused had the intent to commit whatever offense was charged.

However, this position has also been rejected by the First District Court of Appeal in Toole v. State, 9 FLW 2073 (Fla. 1st DCA, September 26, 1984), which specifically agreed with the Bennett holding in this regard. The only issue on which there was disagreement with Bennett was in the analysis of the sufficiency of evidence required to prove intent. Therefore, the First District's implicit recession from its previous decision in Brown v. State, 436 So.2d 1113 (Fla. 1st DCA 1983) must be presumed.

Bennett is in conflict with the holdings in L.S. v. State, 446 So.2d 1148 (Fla. 3rd DCA 1984) and Frederick v. State, 451 So.2d 1066 (Fla. 5th DCA 1984). Respondent submits that Bennett is the better-reasoned directive because it reflects the premise that the burden is on the state to prove every essential element of the crime charged. Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975); Pinder v. State, 53 So.2d 639 (Fla. 1951); Purifoy v. State, 359 So.2d 446, 449 (Fla. 1978).

Respondent also disagrees with Petitioner's contention that, in Waters, §810.07 was inapplicable only because the charge therein was attempted burglary rather than burglary. Rather, that decision states that on the facts of record, the section had to be inapplicable because there was no proof of actual entry. It goes on to say that the statute cannot be expanded beyond the clearly expressed legislative purpose, and that the establishment of an entering with intent to commit an offense does not eliminate the presumption of innocence -- which presumption must, necessarily, apply to the specific offense charged. Waters, at 70.

The decision of the Second District, in Bennett, provides the most valid analysis of this Court's holding in Waters. It states that §810.07 may provide prima facie proof of intent if the state does not allege that the accused intended to commit a specific offense upon entering. However, once an intention to commit a specific offense has been charged, then the state must prove that the accused did, in fact, intend to commit this offense.

The logic of this construction is evident upon its application to the facts in the case at bar. The occupant of the trailer testified that when she woke up after feeling something touch her leg, she saw Respondent run out of her trailer. There was no evidentiary showing of any intent to commit theft, although the child was charged with burglarizing the trailer with intent to commit theft. If the presumption of §810.07 could be used to prove his guilt, when there was absolutely no evidence to support a conviction of the actual crime alleged, manifest injustice would result.

The Waters opinion states that although §810.07 is sufficient to establish the elements of burglary, the evidence adduced must support a conclusion that there was an intention to commit whatever offense has been alleged. Waters at 73. This reflects the well-established precedent that the state must prove every essential element of the crime with which a defendant is charged. Mullaney; Pinder; Purifoy.

Since the offense to be perpetrated within a burglarized structure, as set forth in the charging document, is certainly such an essential element, it must be proven. A conviction obtained otherwise, through application of a statutory presumption related to only a portion of the offense alleged, cannot stand.

CONCLUSION

On the basis of the foregoing facts, arguments and authorities, Respondent asks that the decision of the Second District Court of Appeal be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to the Office of the Attorney General, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida and to the Appellant, T.L.J., 11808 East Bay Road, Gibsonton, FL, 33535, this 3rd day of December, 1984.

Amelia G. Brown
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