IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v. Case No. 65,358

T.L.J., A Child,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE

T. L. J., a child, was charged by July 14, 1983, petition with burglarizing a structure with intent to commit theft. (R-3)

After hearing evidence on Spetember 7, 1983, the Honorable Walter N. Burnside, Jr., found that T.L.J. did unlawfully commit a burglary and placed him on a program of community control. (R-5)

Notice of Appeal was timely filed ($-7); the Public Defenders for the Tenth and Thirteenth Judicial Circuits were associated for Appellate purposes. (R-12) On Appeal, the Second District Court of Appeal reversed the trial court's adjudication of delinquency. (Appendix pg. 1 & 2) Thereafter, Petitioner filed a Notice to Invoke the discretionary jurisdiction of this Court.

STATEMENT OF THE FACTS

On June 13, 1983 at approximately 4:30 a.m., Holly Jo Van Sant woke up after feeling something on her leg and saw the Respondent run out of her trailer. (R 19-20) Ms. Van Sant spoke with a Deputy Sheriff and said it was one of the three boys in the Respondent's family because it was "a colored person." (R 21) When Ms. Van Sant and the deputy went to the Respondent's family and the Respondent was wide awake with his clothes on and the rest of the children were in bed. (R 22-24) Latent fingerprints were taken from the north doorjamb on Mrs. Van Sant trailer. (R 31) A fingerpring expert determined that the print lifted from the north doorjamb were the Respondent's. (R 47)

The Respondent was interviewed by Officer Vanderwall. The Respondent told the Officer that he had been sleeping outside in a car and had seen someone up by the Van Sant trailer. (R 33-34)

Respondent testified that he was not in the Van Sant trailer on the evening in question. The family's trailer was located at his father's worksite at a distance more than a block behind the victim's. When the police officer came there the child told him that his brother was sleeping inside with their mother and could not have gone outside without Respondent, who was in the car at the time, seeing him. Respondent had gone back into the house to sleep when his mother finished cooking her husband's breakfast; the family had all gone back to sleep when Ms. Van Sant came and said Respondent's little brother had gone into her house. (R 56)

When Respondent mowed the Van Sant yard on a previous occasion, he ran out of gas before he finished the job. At that time, Ms. Van Sant told him to come to the trailer; he opened the screen door and knocked on the inside door. The child testified that he was never in her trailer or on the porch there at any other time. (R 56-57)

Respondent was sleeping in the car because there were seven people - five children and their parents - in the family. Since the trailer was small and it was hot, he went outside to the car to make room for everybody to lie down. (R 57) Before he went back in, he saw a person up around the office which was about three trailers away from Van Sant's. Since several people lived in trailers at this construction site, it was not that unusual for people to be up early in the morning. (R 58-59)

The Child slept in the car everytime the family stayed at the construction site with his stepfather. (R 59) When he cut the field behind the Van Sant house and needed more gasoline he went through the screen door onto the porch in order to knock on the main door. (R 60)

Following closing argument (R 61-64), the defense motions to dismiss and to exclude the fingerpring testimony were renewed and denied. (R 64) Respondent was found guilty as charged, adjudicated guilty and placed on probation. (R 64-65)

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THE CASE SUB JUDICE IS EXPRESSLY AND DIRECTLY IN CONFLICT WITH THE THIRD DISTRICT COURT OF APPEALS IN L.S. v. STATE.

In the case sub judice, the Second District Court of Appeal reversed the adjudication of delinquency of the Respondent pursuant to a petition charging burglary because there was insufficient evidence to prove that Respondent intended to steal anything when he entered the house trailer. The Second District cited Bennett v. State, 438 So.2d 1034 (Fla. 2d DCA 1983), for authority and stated: since the state charged Respondent with intending to commit a specific offense, it may not rely upon the presumption afforded by section 810.07, Florida Statutes (1981).

The Third District Court of Appeal in L.S. v. State, 9 FLW 593 (Fla. 3d DCA March 13, 1984), the court said:

> If the state were precluded from using presumption by virtue of charging the intent to commit a specific offense, there would be no incentive for the state to ever enumerate the particular offense. We hold, therefore, that when the state charges that the defendant did intend to commit a specific offense after the breaking and entering, it may avail itself of section 810.07.

As such, it is evident that the Second and Third Districts are expressly and directly in conflict as to the application of the presumption of intent to commit an offense afforded by section 810.07, Florida Statutes.

CONCLUSION

Wherefore there is expressed direct conflict of law between the Second and Third District Courts of Appeal, this Court should exercise its discretionary jurisdiction in the case sub judice.

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 U.S. Mail to Amelia G. Brown, Assistant Public Defender, Courthouse Annex, Second Floor, Tampa, Florida 33602, on this 14th day of June, 1984.

OF COUNSEL FOR PETITIONER