

IN THE SUPREME COURT OF FLORIDA

SYE CHRISTOPHER JENKINS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO.65,439

FILED

SID J. WHITE

FEB 7 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S REPLY BRIEF ON MERITS

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street - 13th Floor
West Palm Beach, FL. 33401
(305) 837-2150

GARY CALDWELL
Assistant Public Defender

Counsel for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND THE FACTS	2
ARGUMENT	
POINT I THE DISTRICT COURT OF APPEAL ERRED IN UPHOLDING THE TRIAL COURT'S RETENTION OF JURISDICTION OVER ONE-THIRD OF PETITIONER'S SENTENCE	3
POINT II THE DISTRICT COURT ERRED BY UPHOLDING PETITIONER'S CONVICTION WHERE THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE CONVICTION	4
POINT III WHERE THE INFORMATION CHARGED PETI- TIONER ONLY WITH SIMPLE ROBBERY, THE TRIAL COURT ERRED BY ADJUDGING PETITIONER GUILTY OF, AND SENTENCING HIM FOR, ARMED ROBBERY	5
POINT IV THE TRIAL COURT ERRED BY GIVING A FLIGHT INSTRUCTION NOT SUPPORTED BY THE EVIDENCE	6
POINT V THE TRIAL COURT ERRED BY REFUSING TO GIVE PETITIONER'S REQUESTED INSTRUC- TION AS TO IDENTIFICATION	7
CONCLUSION	8
CERTIFICATE OF SERVICE	8

AUTHORITIES CITED

	<u>PAGE</u>
<u>CASES CITED</u>	
<u>D.M. v. State, 435 So.2d 976</u> (Fla. 3rd DCA 1983)	4
<u>J.L.B. v. State, 396 So.2d 761</u> (Fla. 3rd DCA 1981)	4
<u>Morgan v. State, 355 So.2d 149</u> (Fla. 1st DCA 1982)	4

PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and appellee in the lower courts. In the brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND THE FACTS

Petitioner relies upon the statements in his initial brief.

ARGUMENT

POINT I

THE DISTRICT COURT OF APPEAL ERRED IN UPHOLDING
THE TRIAL COURT'S RETENTION OF JURISDICTION
OVER ONE-THIRD OF PETITIONER'S SENTENCE

Petitioner relies upon the argument in his initial brief on
this point.

POINT II

THE DISTRICT COURT ERRED BY UPHOLDING PETITIONER'S CONVICTION WHERE THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE CONVICTION

In its answer brief, the state has contended: "This case differs from all cases cited by Petitioner in one very important respect. That is in none of those cases did the defendants enter the place where the crime was committed and stand alongside the other perpetrators, as did Petitioner in the instant case." Answer brief on merits, page 11. Significantly, the state has not pointed to any case which indicates that mere presence inside the building at which an offense is committed is sufficient to convict a bystander as a principal in the crime.

Merely standing next to a criminal during the commission of a crime is not enough evidence to convict a person as an aider and abettor. J.L.B. v. State, 396 So.2d 761 (Fla. 3rd DCA 1981) (evidence insufficient to sustain adjudication for theft where child went up to victim with thief, stood next to thief during commission of crime, and then fled and hid himself). See also D.M. v. State, 435 So.2d 976 (Fla. 3rd DCA 1983) (fact that appellant was in car with five other youths, and that one of the others reached out of car and snatched purse from victim, coupled with fact that purse found between appellant's legs, insufficient to sustain finding that appellant was guilty of robbery), and Morgan v. State, 355 So.2d 149 (Fla. 1st DCA 1982).

The fact that petitioner ran away from a man in a business suit ten days later adds nothing to the state's case. Cf. J.L.B., supra.

POINT III

WHERE THE INFORMATION CHARGED PETITIONER ONLY
WITH SIMPLE ROBBERY, THE TRIAL COURT ERRED BY
ADJUDGING PETITIONER GUILTY OF, AND SENTENCING
HIM FOR, ARMED ROBBERY

In its answer brief, the state has said of petitioner's argument on this point: "Petitioner argues that because of an alleged defect in the information he could not be convicted of armed robbery." Answer brief on merits, page 13.

Notwithstanding the state's characterization of his argument, petitioner asserts that there is absolutely nothing wrong with the information in this case. It legally and correctly charges petitioner with the offense of simple robbery. Since the state charged petitioner only with simple robbery, it was error for the trial court to adjudge him guilty of armed robbery, and to sentence him for that offense.

POINT IV

THE TRIAL COURT ERRED BY GIVING A FLIGHT
INSTRUCTION NOT SUPPORTED BY THE EVIDENCE

On this point the state has based its argument upon the proposition that the evidence "was clearly competent to support an instruction on flight." Answer brief on merits, page 14 (e.s.). The state may or may not be correct in its position. The point is, however, that the evidence does not support the flight instruction actually given. The instruction actually given was to the effect that where a person flees the scene of a crime before he is been suspected of the crime, his flight is a circumstance of guilt. R148. The evidence at bar does not support that instruction.

POINT V

THE TRIAL COURT ERRED BY REFUSING TO GIVE
PETITIONER'S REQUESTED INSTRUCTION AS TO
IDENTIFICATION

Petitioner relies upon the argument on this point in his
initial brief on the merits.

CONCLUSION

Based upon the foregoing arguments and the authorities cited therein, petitioner respectfully requests this Honorable Court to reverse the decision of the Fourth District Court of Appeal and remand this cause with such directives as may be deemed appropriate.

Respectfully Submitted,


RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150



GARY CALDWELL
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Robert S. Jaegers, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida, 33401 this 5th day of February, 1985.



Of Counsel