

IN THE SUPREME COURT OF FLORIDA

BRUCE ALLEN GRAHAM, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO. 65,777

PETITIONER'S REPLY BRIEF ON THE MERITS

**FILED**  
SID J. WHITE  
OCT 17 1984  
CLERK, SUPREME COURT

JAMES B. GIBSON *pl*  
Chief Deputy Clerk  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES  
ASSISTANT PUBLIC DEFENDER  
1012 South Ridgewood Avenue  
Daytona Beach, Florida  
32014-6183  
Phone (904) 252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ISSUE IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE STATUTORY PRESUMPTION SET FORTH IN SECTION 810.07 IS INAPPLICABLE ON ITS FACE TO A CHARGE OF ATTEMPTED BURGLARY.	1
CONCLUSION	3
CERTIFICATE OF SERVICE	3

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Frederick v. State  
451 So.2d 1066 (Fla. 5th DCA 1984)

1

State v. Waters  
436 So.2d 66 (Fla. 1983)

2

OTHER AUTHORITIES:

Section 810.07, Florida Statutes

1,2

IN THE SUPREME COURT OF FLORIDA

BRUCE ALLEN GRAHAM, )  
 )  
 Petitioner,, )  
 )  
 vs. ) CASE NO. 65,777  
 )  
 STATE OF FLORIDA,, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

PETITIONER'S REPLY BRIEF ON THE MERITS

ISSUE

IN REPLY TO THE STATE AND IN SUPPORT OF  
THE CONTENTION THAT THE STATUTORY  
PRESUMPTION SET FORTH IN SECTION 810.07  
IS INAPPLICABLE ON ITS FACE TO A CHARGE  
OF ATTEMPTED BURGLARY.

Respondent appears to be interjecting a related but totally irrelevant issue into the case at bar. This interloper is the current conflict of authority on the issue presented in Frederick v. State, 451 So.2d 1066 (Fla. 5th DCA 1984) (conflict certified and presently awaiting decision in Frederick v. State, Case No. 65,534.) The intruding issue relates to the state choosing to specify the intended offense during the course of a burglary and the state's reliance upon the statutory presumption of Section 810.07 regarding stealthful entry. This Court should focus upon the certified question from the Fifth District Court of Appeal in resolving the case at hand. Once again, Petitioner

asserts that State v. Waters, 436 So.2d 66 (Fla. 1983) answered this question in holding that Section 810.07 is inapplicable on its face because here the charge was attempted burglary rather than burglary. (Emphasis Added). This Court should answer the certified question in the negative.

CONCLUSION

Based upon the foregoing cases, authorities and policies cited herein and in the initial brief on the merits, Petitioner respectfully prays that this Honorable Court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

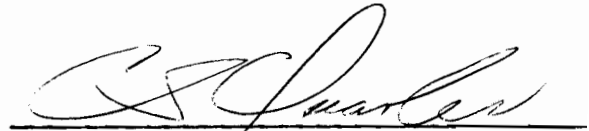


CHRISTOPHER S. QUARLES  
ASSISTANT PUBLIC DEFENDER  
1012 South Ridgewood Avenue  
Daytona Beach, Florida  
32014-6183  
Phone (904) 252-3367

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 and Mr. Bruce Allen Graham, Inmate No. B-050274, Baker C. I., Post Office Box 500, Olustee, Florida 32072 this 16<sup>th</sup> day of October, 1984.



CHRISTOPHER S. QUARLES  
ASSISTANT PUBLIC DEFENDER