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STATEMENT OF THE CASE AND FACTS

Respondent accepts and adopts petitioner's recitation of the case and facts with the addition of one point, namely, that no motion to dismiss the information was filed prior to petitioner's trial in circuit court. Petitioner did not assert below that he was in any way hindered in the preparation of his defense or that he was exposed to double jeopardy; his only assignment of error is that the jurisdiction of the circuit court is not invoked by an information that charges either a felony or a misdemeanor.

SUMMARY OF ARGUMENT

Since the Florida Constitution, statutes, and case law all agree that the circuit court has jurisdiction over all felonies and all misdemeanors arising out of the same circumstances, an information that sufficiently charges either a felony or a misdemeanor invokes the jurisdiction of the circuit court.

THE JURISDICTION OF THE CIRCUIT
COURT IS INVOKED BY AN INFORMATION
WHICH SUFFICIENTLY ALLEGES EITHER
A FELONY OR A MISDEMEANOR.

The information in this case alleged that Fike did "unlawfully and feloniously sell or deliver to another person, cannabis." The sale of any amount of cannabis is a felony. § 893.13 (1)(a)(2), Fla. Stat. (1983). However, for delivery to be a felony, the quantity must exceed twenty grams or else the delivery must be for consideration. § 893.13 (1)(f), Fla. Stat. (1983). The information did not specify the quantity delivered, nor that the delivery was for consideration, therefore, the information charged a felony (sale) or a misdemeanor (delivery).

Initially, respondent respectfully requests this honorable court to reconsider its decision to grant certiorari review in this cause on the basis of express and direct conflict with the decisions of Pope v. State, 268 So.2d 173 (Fla. 2d DCA 1972), and Rogers v. State, 336 So.2d 1233 (Fla. 4th DCA 1976). In both of these cases, the information was insufficient to charge a felony. The circuit court did not acquire jurisdiction because a felony was never charged. This case is materially different from Pope and Rogers, supra, in that all parties here agree that a felony was sufficiently charged in this information, sale of cannabis. The circuit court has jurisdiction over all felonies, therefore an information that sufficiently charges a felony must be heard in circuit court. Respondent notes that the two cases relied upon for the basis of conflict were not even discussed as precedential authority in petitioner's brief

on the merits.

Petitioner is not alleging that the information is so vague and indefinite as to mislead him in the preparation of his defense, or that there is a substantial danger of a new prosecution of the same offense. Fl. R. Crim. P. 3.140 (o). Petitioner proceeded without objection to trial in circuit court.

It is undisputed that the circuit court has jurisdiction over all felonies and all misdemeanors arising out of the same circumstances once a felony charge is filed. Art. V, § 5, Fla. Const.; § 26.01 (d), Fla. Stat. (1983). Therefore, the dispositive issue in this case is whether the information sufficiently charged a felony. All parties agree that the charge that Fike "unlawfully and feloniously (sold)...cannabis... in violation of Florida Statute 893.13 (1)(a)(2); Third Degree Felony" charges a felony. The circuit court has exclusive, original jurisdiction.

This issue is very similar to the issue resolved in the Court's recent decision of State v. Phillips, 10 FLW 110, (Fla. February 7, 1985). The information in that case sufficiently charged felony petit theft by reference to the correct statute and by the heading "Felony Petit Theft". Here, the heading of the information is "Sale of Marijuana", and it alleges that Fike feloniously sold cannabis, a third degree felony. The correct statute was cited. It is clear that a crime that is enhanced to a felony on the basis of prior

convictions is sufficiently alleged as a felony without specifying the underlying convictions. Phillips, supra; McPhadder v. State, 450 So.2d 1264 (Fla. 1st DCA 1984). It is equally clear that an information framed substantially in the language of the statute is sufficient to allege the crime. State v. Dilworth, 397 So.2d 292 (Fla. 1981); State v. Lindsey, 446 So.2d 1074 (Fla. 1984).

The Fifth District was correct in determining that since a felony was charged in this cause, the circuit court has exclusive, original jurisdiction. The alternative language which charges a misdemeanor is mere surplusage. Petitioner has not demonstrated his entitlement to the relief sought by either fact or law. Accordingly, respondent respectfully requests that the decision below be affirmed in all respects.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully prays this honorable court affirm the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished, by mail, to Lucinda H. Young, Assistant Public Defender for Robert Glen Fike, at 1012 South Ridgewood Avenue, Daytona Beach, Florida 32014, this 6th day of March, 1985.

Belle B. Turner

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