

045

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

DEC 10 1984

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA,)
)
 Petitioner,)
)
 VS.)
)
 SAMUEL LEE BROWN,)
)
 Respondent.)
 _____)

CASE NO. 66,140

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

DANIEL J. SCHAFER
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida
32014-6183
Phone: (904) 252-3367

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
ISSUE WHETHER THE DECISION IN <u>BROWN V. STATE</u> 9 FLW 2000 (FLA. 5TH DCA <u>SEPTEMBER 20, 1984</u>) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION IN <u>STATE V. GIBSON</u> , 452 SO.2D 553 (FLA. 1984).	2
CONCLUSION	3
CERTIFICATE OF SERVICE	3

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

<u>Brown v. State</u> 9 FLW 2000 (Fla. 5th DCA September 20, 1984)	2
<u>State v. Gibson</u> 452 S0.2d 553 (Fla. 1984)	2

OTHER AUTHORITIES:

Section 775.087(1), Florida Statutes (1983)	2
Section 790.07(2), Florida Statutes (1983)	2
Section 812.13(2)(a), Florida Statutes (1983)	2

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.) CASE NO. 66,140
)
 SAMUEL LEE BROWN,)
)
 Respondent.)
 _____)

RESPONDENT'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts, with the following addition:

The proof adduced at trial showed that Appellant's accomplice carried a firearm, while Appellant was in possession of a pellet gun (R 327,393,469).

ISSUE

WHETHER THE DECISION IN BROWN
V. STATE 9 FLW 2000 (FLA 5th DCA
SEPTEMBER 20, 1984), EXPRESSLY AND
DIRECTLY CONFLICTS WITH THE DECISION
IN STATE V. GIBSON, 452 So.2d 553
(FLA. 1984).

Petitioner has requested this Court to accept jurisdiction in this cause to resolve a conflict between this case and State v. Gibson, 452 So.2d 553 (Fla. 1984).

Gibson holds that a defendant may be prosecuted for robbery while armed (Section 812.12(2)(a), Florida Statutes 1983) and use or display of a firearm during the commission of a felony (Section 790.07(2), Florida Statutes, 1983) even if both offenses arise from the same act. This is because armed robbery requires only that a weapon be carried while "use or display" is required by Section 790.07.

Gibson did not address the issue decided in Respondent's case. Respondent never argued, nor did the District Court hold, that there is no distinction between using and carrying a weapon. The Court held only that this distinction is not relevant to the determination of whether to apply Section 775.087(1) Florida Statutes, (1983) to enhance an already enhanced armed robbery charge.

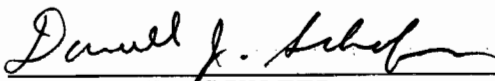
Gibson states that the "using/carrying" distinction is important in one situation. Brown holds that the distinction is irrelevant in an entirely different situation. This is not a conflict.

CONCLUSION

Based upon the arguments and authorities cited herein, Respondent requests this Honorable Court to decline jurisdiction over this cause.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT


DANIEL J. SCHAFFER
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida
32014-6183
Phone: (904) 252-3367

ATTORNEY FOR RESPONDENT

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 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 and to Mr. Samuel Lee Brown, Inmate No. 093217, Apalachee Correctional Institute, P.O. Box 699, Sneads, Florida this 6th day of December, 1984.


DANIEL J. SCHAFFER
ASSISTANT PUBLIC DEFENDER