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CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

IN THE SUPREME COURT
OF FLORIDA

CHARLES MICHAEL RAMSEY,

Petitioner,

v.

CASE NO. 66,167

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts, but invites the court's attention to an additional pertinent fact, 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 contention 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 have determined 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.

ARGUMENT

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

The information in the case sub judice alleged that Ramsey did "unlawfully and knowingly sell or deliver to another person, or possess with intent to sell or deliver 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).

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 for the same offense. Fla. 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). The petitioner has not conclusively demonstrated that this is not the case here. A dispositive issue in this case is whether the information sufficiently charged a felony. It is not in dispute that the charge that Ramsey "unlawfully and knowingly sold cannabis" in violation of Florida Statute 893.13(1)(a)(2) charges a third

degree felony. The circuit court, therefore, has exclusive, original jurisdiction.

This issue is very similar to the issue resolved in this court's recent decision in State v. Phillips, 10 F.L.W. 110, (Fla. Feb. 7, 1985). The information in Phillips 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 Ramsey 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). It is irrelevant that at the conclusion of the state's case, the court granted a motion for partial judgment of acquittal as to the "sale" aspect of section 893.13(1)(a)(2) as "there is no rule which requires the state to prove the felony charge for the court to retain jurisdiction." State v. Vasquez, 450 So.2d 303 (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 relief. Accordingly, the decision below should 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 Respondent's Brief on the Merits has been furnished by mail to Larry B. Henderson, Assistant Public Defender, 1012 South Ridgewood Avenue, Daytona Beach, Florida 32014, counsel for the defendant, Charles Michael Ramsey, this 16th day of April, 1985.


MARGENE A. ROPER
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