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IN THE SUPREME COURT OF FLORIDA

CHARLES MICHAEL RAMSEY,)
)
Defendant/Petitioner,)
)
vs.)
)
STATE OF FLORIDA,)
)
Plaintiff/Respondent.)
_____)

CASE NO. 66,167

PETITIONER'S INITIAL BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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PETITIONER'S INITIAL BRIEF ON THE MERITS

STATEMENT OF THE CASE

Mr. CHARLES MICHAEL RAMSEY (hereafter Petitioner) was charged by information, in pertinent part, as follows: ". . . CHARLES MICHAEL RAMSEY. . . did then and there unlawfully and knowingly sell or deliver to JAMES GIBSON, or possess with intent to sell or deliver a controlled substance, named or described in Section 893.03(1)(c), Florida Statutes, to wit: CANNABIS, contrary to Section 893.13(1)(a)(2), Florida Statutes (R115)^{1/}.

The matter proceeded to a non-jury trial in the Circuit Court for Seminole County, the Honorable Dominick J. Salfi presiding. The State's case consisted of the testimony of one witness [the co-defendant] (R3-25). At the con-

^{1/} (R) refers to the Record on Appeal of the instant cause, Supreme Court Case No. 66,167

clusion 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), Florida Statutes (R25).

Petitioner thereafter testified in his own behalf (R29-43), and following rebuttal testimony, defense counsel moved for a Judgment of Acquittal, and further argued that an election of charges should at that time be made by the Court (R47-50). Petitioner was adjudicated guilty of the offenses of delivery of a controlled substance, possession of cannabis with intent to sell, and possession of cannabis with intent to deliver (R82), and sentenced to a four (4) year term of imprisonment (R80,172-176).

A Motion to Correct Illegal Sentence was thereafter filed, (R180-185), which Motion alleged that the offenses of which Petitioner had been sentenced were all misdemeanors, and accordingly any sentence for a term of imprisonment over a period of one (1) year was illegal. Following argument upon said Motion to Correct Illegal Sentence (R87-105), the Motion was denied (R192-193).

The Office of the Public Defender was appointed to represent Petitioner for the purpose of appeal (R186,190, 201). On appeal, the Fifth District Court of Appeal affirmed the conviction on the basis of Fike v. State, 9 FLW 1932 (Fla. 5th DCA September 13, 1984), pet. for review granted, Supreme Court Case No. 66,024.

Petitioner applied for discretionary review to this Court on the basis of express and direct conflict. This brief follows.

STATEMENT OF THE FACTS

On October 6, 1982, Petitioner accompanied Richard Bascoe to Brantley Square in Altamonte Springs for the purpose of selling Mr. Bascoe's nephew some marijuana (R29-33). An initial meeting was had in a restaurant, and thereafter Petitioner proceeded to Mr. Bascoe's truck, obtained a sample of the marijuana contained within the truck, returned to the restaurant and handed the sample to Mr. Bascoe's nephew (R33-35). Petitioner was thereafter arrested and charged under Section 893.13(1)(a)(2), Florida Statutes.

SUMMARY OF ARGUMENT

The conviction and sentence of Petitioner are a nullity because the State failed to unequivocally invoke the subject matter jurisdiction of the Circuit Court. Jurisdiction of the Circuit Court was not established by the single count information that disjunctively alleged the commission of a felony or a misdemeanor.

POINT

JURISDICTION OF THE CIRCUIT COURT
CANNOT PROPERLY BE INVOKED BY A
SINGLE-COUNT INFORMATION DISJUNC-
TIVELY ALLEGING THE COMMISSION OF
A FELONY OR A MISDEMEANOR.

In pertinent part, the instant information alleged in its sole count ". . . CHARLES MICHAEL RAMSEY. . . did then and there unlawfully and knowingly sell or deliver to JAMES GIBSON, or possess with intent to sell or deliver a controlled substance, named or described in Section 893.03(1)(c), Florida Statutes, to wit: CANNABIS, contrary to Section 893.13(1)(a)(2), Florida Statutes." (R115). Thus, the information duplicitously alleged in a single count the commission of a felony or a misdemeanor.

The burden of properly invoking a court's jurisdiction is on the state. . . the moving party. Christopher v. State, 397 So.2d 406 (Fla. 5th DCA 1981). Whether a court has subject matter jurisdiction involves a claim of fundamental error that can be raised anytime, even on appeal. Dicaprio v. State, 352 So.2d 78 (Fla. 4th DCA 1977), cert.denied, 353 So.2d 679 (Fla. 1977).

"[T]he allegations of the charging document determine whether the court in which the State files the document has jurisdiction over the cause." Rogers v. State, 336 So.2d 1233,1235 (Fla. 4th DCA 1976) (footnote omitted). In the instant case, the charging document alleges that a felony or a misdemeanor occurred. This

is analogous to a civil complaint alleging that an amount in controversy exceeds \$2,500, or is less than \$2,500. Such an averment is a non sequitur and accomplishes nothing.

As noted early on in the case of Strohbar v. State, 55 Fla. 167, 47 So. 4 (1908):

If, as is common in legislation, a statute makes it punishable to do a particular thing specified, 'or' another thing, 'or' another, one commits the offense who does any one of the things, or any two, or more, or all of them. And the indictment may charge him with any one, or with any larger number, at the election of the pleader; employing, if the allegation is of more than one, the conjunction 'and' where 'or' occurs in the statute. (citations omitted).

Id. at 7. In Strohbar, supra, this Court concluded that an indictment was not duplicitous because the indictment, in a single count, conjunctively alleged alternative portions of a statute carrying the same penalties and thus constituting the same offense. Id. at 7.

Precisely the opposite has occurred in the case sub judice. The State, in a single count, alleged diverse offenses carrying different penalties. . . one a misdemeanor and one a felony. The uncertainty and confusion created by a disjunctive allegation is patent. . . so much so that it must be considered fatal.

It is respectfully submitted that jurisdiction of a court cannot be equivocally invoked. A Circuit Court has exclusive, original jurisdiction in all actions of

law not cognizable by the county courts. Section 26.012 (2)(a), Fla.Stat. (1983). If only a misdemeanor offense is alleged, the circuit court is without jurisdiction and the proper forum is the county court. cf. Waters v. State, 354 So.2d 1277 (Fla. 2d DCA 1978).

The State can find no solace in Section 26.012 (2)(a) Fla.Stat. (1983), which confers jurisdiction to the circuit courts over all felonies "and all misdemeanors arising out of the same circumstances as a felony which is also charged." That provision is clearly intended to provide jurisdiction for the circuit court to contemporaneously hear misdemeanor causes of action in addition to and connected with a felony over which it has exclusive jurisdiction.


It is respectfully submitted that the circuit court never acquired jurisdiction in the instant cause because the averment in the information that Mr. Ramsey committed a felony or a misdemeanor was but a nullity. The State simply failed to meet its burden of unequivocally invoking the jurisdiction of the circuit court. Accordingly, Mr. Ramsey's conviction must be vacated.

CONCLUSION

Based upon the argument and authority contained herein, this Court is asked to vacate Petitioner's conviction.

Respectfully submitted,


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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 at 125 N. Ridgewood Avenue, Daytona Beach, Florida 32014 and to Mr. Charles Michael Ramsey, Inmate No. 712337 Christian Prison Ministries, 2100 Brengle Ave., Orlando, Florida 32808 on this 2nd day of April 1985.


LARRY B. HENDERSON
ASSISTANT PUBLIC DEFENDER