

IN THE SUPREME COURT OF FLORIDA

027
FILED

SID J. WHITE

MAY 8 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

WENDALL J. CHATMAN,

Petitioner,

v.

CASE NO. 66,211

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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CITATION OF AUTHORITIES

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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 Chatman did "unlawfully and feloniously sell or deliver to another, 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 and entered a plea of nolo contendere to selling marijuana.

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 Chatman "unlawfully and feloniously 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 Chatman 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).

Moreover, petitioner's plea of nolo contendere after stipulating to a factual basis constituted a tacit amendment of the information to properly charge the sale of marijuana. See, Shanklin v. State, 369 So.2d 620 (Fla. 2d DCA 1979).

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 re-
spects.

CONCLUSION

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

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 James R. Wulchak, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida, 32014, counsel for the defendant, Wendall J. Chatman, this 24 day of May, 1982.


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