

IN THE SUPREME COURT OF FLORIDA

DORIS MOBLEY,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 66,301

FILED
S. J. WHITE
JUN 19 1965
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Chief Deputy Clerk

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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ATTORNEY FOR PETITIONER

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IN THE SUPREME COURT OF FLORIDA

DORIS MOBLEY,)
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 Petitioner,)
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 vs) CASE NO. 66,301
)
 STATE OF FLORIDA,)
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 Respondent.)
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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

The Petitioner, DORIS MOBLEY, was the Defendant in the trial court and the Appellant in the Fifth District Court of Appeal.

The Respondent, STATE OF FLORIDA, was the Appellee in the Fifth District Court of Appeal.

In this brief the parties will be referred to as the State, and Mobley or Petitioner.

The following symbols will be used:

"BR" - Brief of the Respondent

"BP" - Brief of the Petitioner

ARGUMENT

JURISDICTION OF THE CIRCUIT COURT IS
NOT PROPERLY INVOKED BY AN INFORMATION
DISJUNCTIVELY ALLEGING IN A SINGLE
COUNT THE COMMISSION OF A FELONY OR A
MISDEMEANOR.

With respect, "all parties" do not agree that a felony was sufficiently charged (BR3,4). Petitioner contends that the State charged in the disjunctive, and by not reciting facts which would support conviction of a felony, such as "more than twenty grams of cannabis" or "delivered for a consideration", left the door open to either a felony or a misdemeanor charge (BP4). By so doing, the State did not unequivocally invoke the jurisdiction of the circuit court since it did not unequivocally charge a felony.

If the use of the words "or delivery" is "mere surplusage", as is suggested by the District Court and the State, the conjunctive "and" would be the appropriate signal. As it stands, "the use of the word "or" indicates two independent exclusive alternatives" (BR4).

In this case, unlike State v. Phillips, 10 FLW 110 (Fla., February 7, 1985), the information did not provide a sufficiently definite statement of the essential facts which would have constituted the offense charged, since it equivocally charged the language appropriate to a felony or a misdemeanor. Hence the information was insufficient to charge a felony.

CONCLUSION

BASED UPON the arguments and authorities presented herein, the Petitioner respectfully requests that this Honorable Court reverse the decision of the Fifth District Court of Appeal and remand with directions to vacate the Petitioner's judgment and sentence.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014; and mailed to Doris Mobley, Inmate No. 803684, Florida Correctional Institute, Post Office Box 147, Lowell, Florida 32663, on this 11th day of June, 1985.

Michael L. O'Neill

MICHAEL O'NEILL
ASSISTANT PUBLIC DEFENDER