

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,786
66,787

THE STATE OF FLORIDA,

Petitioner,

vs.

C.S., a juvenile and
I.P., a juvenile,

Respondents.

FILED
NOV 10 1965
CLERK SUPREME COURT
By [Signature] Clerk

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON THE MERITS

JIM SMITH
Attorney General
Tallahassee, Florida

RANDI KLAYMAN LAZARUS
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue, Suite 820
Miami, Florida 33128

(3050 377-5441

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND OF THE FACTS	1-2
POINT ON APPEAL	2A
SUMMARY OF ARGUMENT	3
ARGUMENT	4-6
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
State v. Alexander, 406 So.2d 1192 (Fla. 4th DCA 1981)	5
State v. C.C., ____ So.2d ____ (Fla. 3d DCA 1983) <u>En Banc</u> , <u>Approved</u> ____ So.2d ____ (Fla. Case No. 64,354) .	2
State v. Fadden, 466 So.2d 1093 (Fla. 5th DCA 1985)	5
State v. Jones, ____ So.2d ____ (Fla. Case no. 64,042, October 17 1985)[10 F.L.W. 565]	6
State v. J.T.S., 373 So.2d 418 (Fla. 2nd DCA 1979)	5
State v. Smith, 260 So.2d 489 (Fla. 1972)	6
State v. West, 262 So.2d 457 (Fla. 4th DCA 1972)	5
State v. Wise, 464 So.2d 1245 (Fla. 1st DCA 1985)	6

OTHER AUTHORITIES

Section 810.014, Fla.Stat.	1
Section 810.02, Fla.Stat.	1
Fla.R.Crim.P. 3.190(c)(4)	5

INTRODUCTION

The State of Florida, was the Petitioner/Prosecution in the trial court. I.P. and C.S., juveniles were co-defendants in the lower court. In this brief, the parties will be referred to as they appeared below. The symbol "ST" will be used to designate the supplemental transcript being attached as an appendix to this brief. The symbol "SD" will be used to designate the supplemental documents being attached as an appendix to this brief. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND OF THE FACTS

On November 13, 1984, the Petitioner filed its Petition for Delinquency against the Defendants alleging that they committed grand theft of an automobile, in violation of F.S. 810.02 and burglary of an automobile in violation of F.S. 812.014. (SD 1-2).

On December 6, 1984, the defendants filed their motions to dismiss. (SD 3-5)¹.

¹Although the motion to dismiss was filed by I.P., C.S. subsequently adopted said motion orally. (ST. 2).

On December 21, 1984, the motion was heard by the Honorable Adele Segall Faske, a Judge of the Circuit Court of the Eleventh Judicial Circuit, Family Division. (ST. 1-31). After hearing argument of counsel said motions were granted for "insufficient evidence." (SD 6-7).

On December 31, 1984, the State moved for rehearing or in the alternative to clarify the court's ruling granting the motion. (SD 8-9). Said motion was not ruled on.

The State of Florida sought appellate or certiorari review of this case in the District Court of Appeal. Review was denied solely upon authority of State v. C.C., ___ So.2d ___ (Fla. 3d DCA 1983) En Banc, Approved ___ So.2d ___ (Fla. Case No. 64,354).

POINT ON APPEAL

WHETHER THE TRIAL COURT DEPARTED FROM
THE ESSENTIAL REQUIREMENTS OF LAW BY
GRANTING THE DEFENDANTS PRE-TRIAL MOTION
TO DISMISS ON THE GROUND THAT THE
REQUISITE INTENT TO COMMIT A CRIME
WAS ABSENT.

SUMMARY OF ARGUMENT

On authority of State v. Smith, 260 So.2d 489 (Fla. 1972), the Appellant seeks a reversal of the District Court's order of dismissal and an instruction to grant the writ of certiorari. The trial court improperly dismissed the State's case on a pre-trial motion to dismiss on the ground that the defendants did not possess the "requisite intent" to commit the crime. Such action constitutes a departure from the essential requirements of law.

ARGUMENT

THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW BY GRANTING THE DEFENDANTS PRE-TRIAL MOTION TO DISMISS ON THE GROUND THAT THE REQUISITE INTENT TO COMMIT A CRIME WAS ABSENT.

The trial court departed from the essential requirements of the law when granting the defendant's motion to dismiss.

Both defendants were charged with burglary of a conveyance and grand theft of a motor vehicle. The crux of their motion to dismiss was that the defendants did not have the "requisite intent" to commit the crime. The defendants claimed that although they knew the vehicle they rode in was stolen, the knowledge came after the crime had been committed by someone else. Thus, they conclude, the requisite intent was absent.

It is widely recognized that no charging document, or any count thereof, should be dismissed unless the court finds the document so vague, indistinct and indefinite as to mislead the accused and embarrass him in the preparation of his defense or expose him after conviction or acquittal to substantial danger of a new prosecution for the same offense.

Defendants' motion to dismiss, however, did not allege that the delinquency petition failed to charge a crime, which would prevent a complete preparation of a defense. Defendants rather argued, in essence, that the State could not prove their case. Clearly such an argument might be appropriate after testimony was given. Then, the court could grant the defendants' motion for a judgment of acquittal, if the State failed to prove its case.

Caselaw holds that intent is not an issue to be decided on a motion to dismiss. In State v. Alexander, 406 So.2d 1192 (Fla. 4th DCA 1981), the court held that intent is almost always inferred from circumstantial evidence. As such, it is not an issue to be decided on a motion to dismiss. In fact, in State v. J.T.S., 373 So.2d 418 (Fla. 2nd DCA 1979), the court held that although the State filed a traverse to that defendants' sworn motion to dismiss, pursuant to Fla.R.Crim.P. 3.190(c)(4), it was error for the court to grant the motion. The sole basis for the motion was that the defendants lacked intent to damage the automobile in question. The court held that the issue of intent should be determined by the trier of fact, after having observed all of the witnesses. State v. West, 262 So.2d 457 (Fla. 4th DCA 1972); State v. Fadden, 466 So.2d

1093 (Fla. 5th DCA 1985); State v. Wise, 464 So.2d 1245 (Fla. 1st DCA 1985).

It is quite clear that the court's ruling improperly prevented the State from putting on, and proving its case.


Accordingly, the trial court's order dismissing defendants' petition must be vacated. The order violates the standard for certiorari review in that it departs from the essential requirements of law. This Honorable Court should recognize this grave error and direct the Third District Court of Appeal to issue this writ of certiorari on Authority of State v. Smith, 260 So.2d 489 (Fla. 1972). Accord, State v. Jones, ___ So.2d ___ (Fla. Case No. 64,042, October 17, 1985)[10 F.L.W. 565], Boyd C.J. concurring.

CONCLUSION

Based upon the foregoing reasons and citations of authorities, the Petitioner, the State of Florida, prays that this Honorable Court enter an order vacating the District Court's order of dismissal of the Petitions for Delinquency with instructions to grant a writ of certiorari to Petitioner.

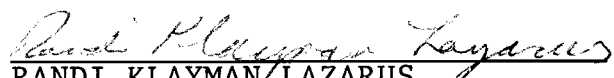
Respectfully submitted,

JIM SMITH
Attorney General


RANDI KLAYMAN LAZARUS
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER was furnished by mail to THE HONORABLE BENNETT H. BRUMMER, Public Defender, Eleventh Judicial Circuit of Florida, 1351 N.W. 12th Street, Miami, Florida 33125, on this 15th day of November, 1985.


RANDI KLAYMAN LAZARUS
Assistant Attorney General

pa/