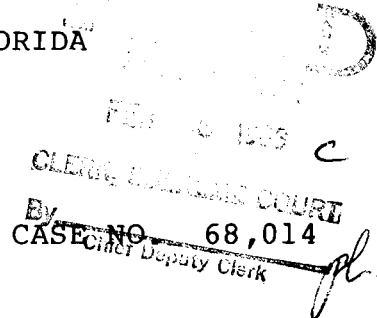


IN THE SUPREME COURT OF FLORIDA

ROSE BENTLEY,  
Petitioner,  
vs.  
STATE OF FLORIDA,  
Respondent.



PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Seventeenth Judicial Circuit, In and For Broward County, Florida and Appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and Appellee in the lower courts. In the brief, the parties will be referred to by name.

The symbol "R" will denote record on appeal

STATEMENT OF CASE AND FACTS

Petitioner will rely on the statement of case and facts in her initial brief.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN IMPOSING THE THREE-YEAR MANDATORY MINIMUM WHERE THE HANDGUN DISPLAYED BY MRS. BENTLEY WAS UNLOADED AND THE STATE NEVER PROVED IT OPERABLE.

The State's reliance on Watson v. State, 437 So.2d 702 (Fla. 4th DCA 1983) and State v. Watson, 453 So.2d 810 (Fla. 1984) in support of its position in the present case is misplaced. Those cases addressed, not the propriety of the imposition of the three-year mandatory minimum for firearm possession, but the sufficiency of the evidence to support conviction of a crime, the maximum penalty for which is enhanced because of the use of a firearm during the offense. That fundamentally different principles apply in these two situations is demonstrated by consideration of the fact that evidence that, e.g., a robbery was committed with a gun may justify a defendant's conviction for robbery with a firearm, but imposition of the mandatory minimum sentence will not be countenanced unless the defendant personally possessed the firearm in question. Earnest v. State, 351 So.2d 957 (Fla. 1977).

Thus, enhancement of the degree of an offense, which only increases the range of the sentence which a judge in his discretion may impose, may well be justified based on the apprehension of the victim that a real, operable gun is being used. But application of a mandatory minimum sentence, by virtue of which the court's discretion to fashion an appropriate sanction based on the facts of the case is entirely removed, must be

invoked only when the legislative definition, as most strictly construed, has been satisfied in every detail. The State's citation of a dictionary definition of the term "firearm" therefore has absolutely no significance toward resolution of the issue presented by the present case. Because the proof in this case was not ambiguous, but established beyond doubt that the weapon Mrs. Bentley had was unloaded and Mrs. Bentley had no means in her possession to make the weapon operable, it cannot be said that imposition of the mandatory minimum sentence is consistent with the legislative intent in promulgating Section 775.087(2), Florida Statutes (1983). Consequently, the trial court was not required to sentence Mrs. Bentley to a three-year mandatory minimum term in this case.

POINT II

THE TRIAL COURT ERRED IN BIFURCATING THE JURY  
INSTRUCTIONS.

Mrs. Bentley will rely on this point as stated in her  
initial brief.



POINT III

THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S  
OBJECTION TO MRS. BENTLEY'S ARGUMENT CONCERNING  
THE MANDATORY MINIMUM PENALTY REQUIRED UPON  
CONVICTION AS CHARGED IN THIS CASE.

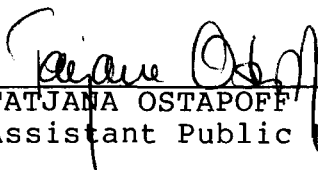
Mrs. Bentley will rely on this point as stated in he initial  
brief.

CONCLUSION

Based upon the foregoing Argument and the authorities cited therein, Mrs. Bentley respectfully requests this Honorable Court to reverse the judgment and sentence of the trial court and remand this cause with such directives as may be deemed appropriate.

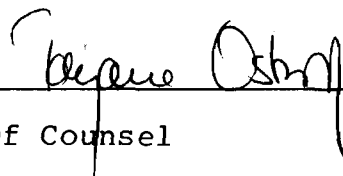
Respectfully submitted,

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\_\_\_\_\_  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to LEE ROSENTHAL, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 4<sup>th</sup> day of February, 1986.

  
\_\_\_\_\_  
Of Counsel