IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

PETITIONER,

-VS-

RONNIE S. LAW,

RESPONDENT.

CASE NO. 69976
1st DCA BJ-440

PETITIONER'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

Respondent, Ronnie S. Law, was convicted of the second degree murder of three-year old Louis James Dees, IV, "Little Jim." The First District Court of Appeal, in an opinion issued January 15, 1987, reversed the conviction on grounds that the trial court had erred in submitting the case to the jury. Specifically, the First District held that since the State's circumstantial evidence left room for several inferences of fact at least one of which was consistent with Respondent's hypothesis of innocence, the State's evidence had been insufficient to allow the jury to reach a verdict on either second degree murder or on any other lesser included offense, and that therefore, the trial court's denial of his motion for judgment of acquittal could not stand. (A 1).

On January 30, 1987, the State filed a Motion to Stay Mandate, which is presently pending, along with a Notice to invoke the discretionary review of this Court. (A 2 & 3). This brief is being filed within the time limits set forth in Fla.R.App.P. 9.120(d).

SUMMARY OF ARGUMENT

The District Court applied the wrong standard of review in deciding whether the trial court below erred in denying a motion for judgment of acquittal. The standard applied expressly and directly conflicts with decisionsof this Court as it holds that the circumstantial evidence adduced must be susceptible to only one inference, and that inference must be inconsistent with a defendant's hypothesis of innocence, before a case can be submitted to the jury.

ISSUE

THE FIRST DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT PERTAINING TO THE STANDARD OF REVIEW WHEN A TRIAL JUDGE DENIES A MOTION FOR JUDGMENT OF ACQUITTAL, AND DIRECTLY AND EXPRESSLY CONFLICTS WITH THIS COURT'S DECISIONS REGARDING THE SUFFICIENCY OF THE STATE'S EVIDENCE TO SUPPORT A JURY'S VERDICT.

ARGUMENT

In **State v. Allen,** 335 So.2d 823,826 (Fla.1976), this Court recognized that circumstantial evidence by its very nature is always susceptible of various interpretations--some consistent with guilt, some consistent with innocence, and thus fashioned the State's burden of proof in such cases as follows:

> We are well aware that varying interpretations of circumstantial evidence are always possible in a case which involves no eye witnesses. Circumstantial evidence, by its very nature, is not free from alternate interpretations. The State is not obligated to rebut conclusively every possible variation, however, or to explain every possible construction in a way which is consistent only with the allegation against defendant. Were these requirements placed on the state for these purposes, circumstantial evidence would always be inadequate to establish a preliminary showing of the necessary elements of the crime.

See also, **Lincoln v. State,** 454 So.2d 1030,1032 (Fla.1984). The

First District holds expressly contrary to **Allen** and **Lincoln,** because sub judice it holds that

> A circumstantial evidence case should not be submitted to the jury unless the record contains competent, substantial evidence which is susceptible of only one inference and this inference is clearly inconsistent with the defendant's hypothesis of innocence[1].

Since the First District finds the record evidence in this cause left room for several inferences of fact at least one of which was consistent with Respondent's hypothesis of innocence, it concludes, notwithstanding the several other inferences of fact and their sufficiency to establish a prima facie case against Respondent, that the State's circumstantial evidence was insufficient to allow the jury to reach a verdict on either second-degree murder or on any other lesser included offense. This standard for reviewing the sufficiency of the circumstantial evidence vis-a-vis a motion for judgment of acquittal is not only erroneous because it requires the State to rebut conclusively every single explanation the evidence could sustain in a way consistent only with its case against a defendant, but in essence it has the effect of saying that henceforth the State should not prosecute someone when the evidence is solely circumstantial,

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1 This standard was first enunciated in **Fowler** v. **State, 492** So.2d **1344,1347-48** (Fla.1st DCA **1986),** a case pending before this Court on the State's petition for certiorari review. See, **State** v. **Fowler,** Case **No. 69,431.**

because by its very nature, such evidence is always going to be susceptible to various interpretations.

The First District's opinion also conflicts directly with this Court's decisions in **Heiney** v. **State,** 447 So.2d 210,212 (Fla.1984); **Rose v. State,** 425 So.2d 521 (Fla.1982), **cert.den.,** 461 U.S. 909 (1983); **Victor v. State,** 141 Fla. 508, 193 So. 762 (1940) and **Lynch v. State,** 293 So.2d 44 (Fla.1974), among others. In **Heiney** and **Rose,** this Court held that the question of whether the evidence fails to exclude all reasonable hypothesis of innocence is for the jury to determine, and where there is substantial competent evidence to support the jury's verdict, such verdict should not be disturbed, **Heiney** at 212; and in **Lynch** at 45, it held that the courts should not grant a motion for judgment of acquittal unless the evidence is such that no view which the jury may lawfully take of it favorable to the State can be sustained, and that where there is room for a difference of opinion or where there is room for such difference of opinion as to the inferences to be drawn from the facts, the case should be submitted to the jury. In the instant case the First District finds the circumstantial evidence left room for several inferences of fact at least one of which was consistent with Respondent's innocence. In other words, the First District acknowledges the evidence in this cause left room for a difference of opinion as to the inferences that could be drawn from the facts adduced, it acknowledges several of those

inferences where favorable to the State, one was not, but yet holds the trial court erred in submitting the case to the jury. Moreover, that the evidence left room for one inference consistent with Respondent's hypothesis of innocence, is of course, a matter for the jury, not the trial court or the appellate court, for it is the jury which must exclude all reasonable hypothesis of innocence but that of guilt. Accord, **Lowery** v. **State,** 450 So.2d 587 (Fla.1st DCA 1984); **Tillman** v. State, 353 So.2d 948,949 (Fla.1st DCA 1978); **Knight** v. **State,** 392 So.2d 337 (Fla.3rd DCA), **rev.den.,** 399 So.2d 1143 (Fla.1981).

In **McArthur** v. **State,** 351 So.2d 972 at 976 (Fla.1977), this Court enunciated the standard of review to determine whether circumstantial evidence is sufficient to sustain a jury's verdict--not the sufficiency of the evidence to withstand a motion for acquittal--by stating that where the proof of guilt is circumstantial, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence and that in applying the standard, "the version of the of the events related by the defense must be believed if the circumstances do not show that version to be false." In **Atkinson v. State,** 247 So.2d 793,795 (Fla.1st DCA 1971), the First District held that a jury question is presented as to whether a defendant is telling the truth when he relates his version inasmuch as it is its prerogative, the jury's, to believe or disbelieve his story, and that if it chooses to disbelieve the

defendant's story, the verdict should be upheld if there remains in the record other sufficient evidence to reasonably support the jury's finding and conclusion. The First District held the same in **Scobee v. State,** 488 So.2d 595 (Fla.1st DCA 1986), even though in that case as in **McArthur,** the defendant never testified. See also, **Drake v. State,** 476 So.2d 210,215 (Fla.2d DCA 1985); **Darty v. State,** 161 So.2d 864 (Fla.2d DCA 1964). And this Court in **Huff v. State, 11** F.L.W. 453 (Fla. Aug. 28, 1986) concurred with the above holdings specifically stating that a jury can properly conclude that a defendant's story is not truthful.

In this case, Respondent testified and presented his version of the events. A jury question was presented as to whether he was telling the truth in view of the other evidence introduced, yet the First District holds it was error to submit the case to the jury. This holding conflicts with **Atkinson, supra.** The First District finds the evidence left room for several inferences of fact, one of them consistent with Appellant's hypothesis, but forgets that the jury had the prerogative to disbelieve him and to reject all of his theories as being unreasonable in view of the other evidence, thus leaving the case with several inferences of fact[2] from which the jury

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[2] The First District's opinion finds several inferences of fact could be drawn from the evidence adduced, only one consistent with Respondent's innocence. Then it contradicts itself and states that to hold "that the blow to the head which caused the victim's death was inflicted by the Appellant or that he acted

could find guilt beyond a reasonable doubt. In **Menendez v. State,** 11 F.L.W. **639** (Fla. Dec. **11, 1986),** this Court held relying on **Jackson v. Virginia, 443 U.S. 307 (1979)** that **a** jury's verdict is supported by competent, substantial evidence if a rational trier of fact could have found proof of guilt beyond a reasonable doubt. The First District's opinion is contrary to Huff and **Menendez** because sub judice once the jury rejected Respondent's hypotheses as unreasonable, as it obviously did when it convicted him, its verdict is supported by competent and substantial evidence.

Given all of the above, this Court should accept jurisdiction to resolve the apparent and express conflicts created by the First District's opinion.

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with a depraved mind regardless of human life would amount to pure speculation." Indeed, those were the inferences of fact that the State's evidence supported.

CONCLUSION

Based on the foregoing, the State urges this Court to invoke its discretionary jurisdiction to resolve the express and direct conflict between the First District's opinion and the decisions of this Court concerning the standard of review pertaining to the denial of a motion for judgment of acquittal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Jurisdictional Brief has been forwarded to Paul Shimek, Jr., 311 North Spring Street, Pensacola, FL 32501, via U. S. Mail, this 5th day of February 1987.

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