IN THE SUPREME COURT OF'FLORIDA
STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner, :

vs. : CASE NO. 69,976

RONNIE S. LAW,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent adopts the facts set forth in the opinion of the First District Court of Appeals, Law v. State, 12 F.L.W. 271 (Fla. 1st DCA January 15, 1987), as his Statement of the Case and Facts. See Reaves v. State, 485 So.2d 829, 830 n3 (FLA. 1986).

SUMMARY OF THE ARGUMENT

The opinion of the First District Court of Appeals does not conflict with any of the appellate decisions cited in Petitioner's brief. As is abundantly clear on the face of the opinion, the District Court applied the well established standard of review of legal sufficiency in circumstantial evidence cases which has been the unimpaired law of this state for over sixty years. See Holton v. State, infra, Mayo v. State, infra, Driggers v. State, infra, MacArthur v. State, infra, Jaramillo v. State, infra, Wilson v. State, infra; and Fowler v. State, infra.

The State failed to prove its theory of the case. The State's evidence in this case failed to dispute the reasonable hypotheses of innocence urged by Law and the evidence, in part, corroborated with the Defendant's explanation. Such a conviction cannot be upheld under any standard of review.

ARGUMENT

THE OPINION OF THE FIRST DISTRICT COURT OF APPEALS DOES NOT CONFLICT WITH ANY OF THE APPELLATE DECISIONS CITED IN PETITIONER'S BRIEF

STANDARD OF REVIEW

In discussing the standard of review! the District Court relied heavily upon its decision in Fowler v. State, 492 So.2d 1344 (Fla. 1st DCA 1986); review denied Sup.Ct. Case No. 69,431 (Fla. February 9, 1987). Citing Fowler, supra, the District Court stated

> [w]e held that the Supreme Court's language in MacArthur V. State, 351 So.2d 972 at 976 (Fla. 1977), ("The version of events related by the defense must be believed if the circumstances do not show that version to be false") dictated that the trial court must determine at the threshhold "whether the state has been able to produce competent, substantial evidence to contradict the Defendant's story." Fowler, 492 So.2d at 1347. When the state has produced evidence to contradict the defendant's story it becomes the jury's duty to determine whether evidence is credible and whether it is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt. Assuming the State fails to carry that burden, however, it becomes the trial court's duty to grant a judgment of acquittal as to the charged offense, as well as to any lesser included offenses not supported by the evidence.
>
> Law v. State, 12 F.L.W. at 271.

The District Court went on to conclude:

> We conclude that a circumstantial evidence case should not be submitted to the jury unless the record contains competent, substantial evidence which is susceptible to only one inference and this inference is clearly inconsistent with the Defendant's

> hypothesis of innocence. Evidence that leaves room for two or more inferences of fact, at least one of which is consistent with the Defendant's hypothesis of innocence is not legally sufficient to make a case for the jury. Law, 12 F.L.W. at 271; citing Fowler, 492 So.2d at 1347-48.

Not only has this been the law in Florida for at least sixty (60) years, Holton v. State, 87 Fla.65, 99 So. 244 (1924), it continues to be the law in Florida as demonstrated by this Court's decision rendered less than six (6) months ago. Wilson v. State, 493 So.2d 1019 (Fla. 1986). In Wilson, this Court applied the standard enunciated in MacArthur v. State, 351 So.2d 972 (Fla. 1977), to reverse one of two first degree murder convictions! on the ground that the circumstantial evidence was insufficient to prove premeditation. [Justices MacDonald and Barkett dissenting in part, would have reversed both convictions of first degree murder on this ground].

MacArthur, supra, further explained the firmly established standard of review in circumstantial evidence cases, stating: "where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence." MacArthur, 351 So.2d at 976, N.12. This means, as held in Mayo v. State, 71 So.2d 899

(Fla. 1954) that "evidence which leaves one with nothing stronger than a suspicion that the Defendant committed the crime is not sufficient to sustain a conviction." 71 So.2d at 904. As further stated in MacArthur, supra, "In applying the standard **the version of events related by the defense must be believed if the circumstances do not show that version to be false.**" MacArthur, 351 So.2d at 976. See also Fowler, 492 So.2d at 1346.

Contrary to the unfounded suggestion made by the State in its jurisdictional brief, the MacArthur principle is not rendered inapplicable where the Defendant's version of events is related through the Defendant's testimony. In MacArthur, itself, the Defendant's version was presented through her out-of-Court statements. On the other hand, in Holton v. State, supra,; Mayo v. State, supra; Driggers v. State, 164 So.2d 200 (Fla. 1964): Jaramillo v. State, 417 So.2d 257 (Fla. 1982): Paz v. State, 480 So.2d 701 (Fla. 3d DCA 1985); and Fowler, supra, as well as the instant case, the Defendant's version was presented through the Defendant's testimony. In Paz v. State, supra, at 703 n.2 the Appellate Court repeated the the standard of review, stating:

> Where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is

> inconsistent with any reasonable hypothesis of innocence. Davis v. State, 90 So.2d 629 (Fla. 1956); Mayo v. State, 71 So.2d 899 (Fla. 1954); Head v. State, 62 So.2d 41 (Fla. 1952) . . . in applying the standard, the version of events related by the defense must be believed if the circumstances do not show that version to be false. Mayo v. State, supra; Holton v. State, 87 Fla. 65, 99 So.2d 244 (1924).

Paz further went on to note that the "circumstantial evidence standard is so well established that a string citation is unnecessary:" **Paz**, 480 So.2d at 703 n.2.

APPLICATION OF STANDARD

The State, in its jurisdictional brief, raises essentially the same argument as it did in its Motion for Rehearing and its jurisdictional brief in Fowler, supra. In both Fowler and the instant case the State attempts to fashion a new standard of appellate review for circumstantial evidence cases which would require a trial court to submit a circumstantial evidence case to the jury whenever both inferences of guilt and innocence may be reasonably drawn from the evidence, even though the State's evidence fails to dispute the inferences of innocence. In each of the cases cited by the State in support of this contention, the State's evidence was sufficient to dispute the factual inferences of innocence relied upon by the Defendant and the defense's Motion for Judgment of Acquittal was properly denied.

Those decisions are therefore distinguishable from both Fowler and Law. As stated in Fowler and relied upon in Law:

> Our review of the evidence in this case led us to conclude that the State's evidence not only failed to dispute the reasonable hypothesis of innocence urged by Fowler but did not prove the State's theory of the case and was, in part, cooperative of the Defendant's explanation. Thus, applying the usual standard of review, the State's evidence was legally insufficient to withstand defendant's motion for judgment of acquittal.
>
> Fowler, 492 So.2d at 1353.

Relying heavily on Fowler, the instant case concluded after applying the well established standard of review:

> As we stated in Fowler, to conclude that the blow to the head which caused the victim's death was inflicted by Appellant or that he acted with a depraved mind regardless of human life would amount to "pure speculation".

Since the evidence, even when viewed in the light most favorable to the State, was not inconsistent with innocence, it was clearly insufficient as a matter of law to sustain the conviction.

If the State had presented substantial, competent evidence which conflicted with the Defendant's version of the incident, then the principles upon which the State argues would come into play and the case would have gone to the jury to resolve the conflicting evidence. But where, as here, the State's evidence has

not even produced substantial and competent evidence to overcome any reasonable hypothesis of innocence and has not materially contradicted the Defendant's version, then the State has failed, as a matter of law, to meet its burden of overcoming the Defendant's presumption of innocence, and the evidence is legally insufficient to go to the jury or to sustain a conviction. Mayo, supra: MacArthur, supra; Fowler, supra.

Each of the cases cited in the State's jurisdictional brief relies on the same long recognized standard of review. It is only the particular facts in each of the State's cases as applied to this standard, that results in the different conclusions.

CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, Respondent respectfully requests that this Court decline to accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to Raymond L. Markey, Esquire, Assistant Attorney General, The Capitol, Tallahassee, FL 32399-1050, this 4th day of March, 1987.

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