

# SUPREME COURT OF FLORIDA

---

No. 78,987

---

A. B. G., a child, Petitioner,  
vs.

STATE OF FLORIDA, Respondent.

[October 22, 1992]

OPINION:

PER CURIAM.

We originally accepted jurisdiction to review *A.B.G. v. State*, 586 So. 2d 445 (Fla. 1st DCA 1991), based on conflict jurisdiction. See Art. V, § 3(b)(3), Fla. Const. After oral argument, we now determine that jurisdiction was improvidently granted.

Accordingly, this Court is without jurisdiction to hear this cause and the case is hereby dismissed.

It is so ordered.

OVERTON, McDONALD, GRIMES and HARDING, JJ., concur.

BARRETT, C.J., dissents with an opinion, in which SHAW and KOGAN, JJ., concur.

NO MOTION FOR REHEARING WILL BE ALLOWED.

DISSENTBY: BARRETT

BARRETT, C.J., dissenting.

I would accept jurisdiction in this case based on conflict with *State v. Law*, 559 So. 2d 187 (Fla. 1989). As Judge Kahn pointed out in his dissenting opinion below:

In the present case, the state relied entirely upon circumstantial evidence to prove intent. Accordingly, the majority looks to *Law*, supra, the supreme court's recent enumeration of the "special standard of review of the sufficiency of the evidence" where conviction is based entirely upon circumstantial evidence. The standard established in *Law*, however, requires as a procedural threshold that the state "introduce competent evidence which is inconsistent with the defendant's theory of events." While setting out this legal principle in its opinion, the majority fails to heed it.

586 So. 2d at 448 (Kahn, J., dissenting) (citations omitted). Thus, although the majority below articulated the correct standard, the court did not apply that standard consistent with precedent in this area.

I agree with Judge Kahn that the State failed to exclude, beyond a reasonable doubt, the reasonable hypothesis of A.B.G.'s innocence raised by the defense. See, e.g., *C.C.P. v. State*, 479 So. 2d 858, 859 (Fla. 1st DCA 1985); *J.W. v. State*, 467 So. 2d, 796, 797 (Fla. 3d DCA 1985); *In re A.R.*, 460 So. 2d 1024, 1025 (Fla. 4th DCA 1984); *G.C. v. State*, 407 So. 2d 639, 640 (Fla. 3d DCA 1981).

SHAW and KOGAN, JJ., concur.

COUNSEL: Nancy A. Daniels, Public Defender and Josephine L. Holland, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner.

Robert A. Butterworth, Attorney General and Laura Rush, Assistant Attorney General, Tallahassee, Florida,

for Respondent.