

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID. J. WHITE  
MAR 16 1995  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

vs.

EUGENE C. BAIN,

Respondent.

Case No. 85,294

**RESPONDENT'S BRIEF ON JURISDICTION**

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15th Judicial Circuit of Florida

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**TABLE OF CONTENTS**

TABLE OF CONTENTS . . . . .	i
TABLE OF AUTHORITIES . . . . .	ii
PRELIMINARY STATEMENT . . . . .	iii
STATEMENT OF THE CASE AND FACTS . . . . .	1
SUMMARY OF ARGUMENT . . . . .	2
ARGUMENT . . . . .	3
THIS COURT SHOULD NOT ACCEPT JURISDICTION HEREIN WHEN THE DISTRICT COURT OF APPEAL WHICH DOES NOT PASS UPON A QUESTION CERTIFIED BY IT TO BE OF GREAT PUBLIC IMPORTANCE. . . . .	3
CONCLUSION . . . . .	5
CERTIFICATE OF SERVICE . . . . .	5

**TABLE OF AUTHORITIES**

**CASES**

**PAGE**

**Baker v. State**, 19 Fla. L. Weekly S274  
(Fla. May 26, 1994) . . . . . 2, 3

**Hamilton v. State**, 19 Fla. L. Weekly D2441  
(Fla. 2d DCA November 16, 1994) . . . . . 2, 4

**OTHER AUTHORITIES**

**FLORIDA CONSTITUTION**

Article V, Section 3(b)(4) . . . . . 2, 3

## PRELIMINARY STATEMENT

Respondent was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For Indian River County, Florida and the appellant in the Fourth District Court of Appeal. Petitioner was the prosecution and the appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbols will be used:

R = Record on Appeal

T = Transcript of trial and sentencing proceedings

A = Appendix

## STATEMENT OF THE CASE AND FACTS

Respondent was convicted of burglary of a structure following trial by jury and sentenced as a habitual felony offender to ten years imprisonment (R 26, 33-34, 35-38, T 152-155, 164-165).

At trial, the state's own evidence established that there was no evidence of entry into the school building (A-1; T 24-25, 78-79, 88). The cafeteria building and the area next to it were not fenced or otherwise enclosed (T 24-25). Respondent admitted to being on the grounds but maintained he left without entering the cafeteria building (T 78-79, 88). The trial judge denied Appellant's motion for judgment of acquittal based on insufficient evidence of entry, considered the unenclosed area around the building to be included within the curtilage (T 100-105, 115-120).

On appeal, the Fourth District Court of Appeal reversed the judgment and sentence, finding there was no proof that the defendant entered the cafeteria "...or any curtilage the building not having been enclosed in any manner." (A-1).

## SUMMARY OF ARGUMENT

The Fourth District held that there was a failure of proof that the defendant entered the school building nor any curtilage, the building not having been enclosed in any manner. In so holding, this case is consistent with prevailing precedent, as well as this Court's recent decision in Baker v. State, 19 Fla. L. Weekly S274 (Fla. May 26, 1994). This case involves the sufficiency of the evidence, turning on the particular facts below.

In contrast, Hamilton v. State, 19 Fla. L. Weekly D2441 (Fla. 2d DCA November 16, 1994), cited by Petitioner as a basis for jurisdiction, involves a jury instruction issue which was not addressed in Bain v. State [Appendix]. Unlike the Hamilton decision, the decision at bar passes upon no question certified by the Fourth District to be of great public importance. Hence, there is no jurisdictional basis to review the decision in Respondent's case under Article V, Section 3(b)(4) of the Florida Constitution.

By refusing jurisdiction, this Court will implicitly be reaffirming Baker, supra, as well as the Fourth District's holding herein.

## ARGUMENT

THIS COURT SHOULD NOT ACCEPT JURISDICTION  
HEREIN WHEN THE DISTRICT COURT OF APPEAL WHICH  
DOES NOT PASS UPON A QUESTION CERTIFIED BY IT TO  
BE OF GREAT PUBLIC IMPORTANCE.

This Court should not exercise its jurisdiction herein. The decision of the Fourth District Court of Appeal does not pass on a question certified by it to be of great public importance. Article V Section 3(b)(4), Florida Constitution. As a preliminary matter, Respondent contends there is no basis for this Court's jurisdiction because the District Court passes upon no question certified by it to be one of great public importance. Consequently, there is no reason for this Court to exercise jurisdiction. Article V, Section 3(b)(4). On this basis alone, jurisdiction should be denied.

Additional grounds to deny jurisdiction are present as well. In its opinion, the Fourth District found that there was a failure of proof at trial that the defendant entered the school building or any curtilage "...the building not having been enclosed in any manner." (A-1). In so holding, the Fourth District reversed the burglary conviction based upon insufficient evidence, without detailing its reasoning further. The reason for such an opinion is that it is entirely consistent with prevailing precedent, including this Court's recent decision in Baker v. State, 19 Fla. L. Weekly S274 (Fla. May 26, 1994) and narrowly limited to the facts below. Therefore, Respondent submits that this Court should decline jurisdiction so that the succinct and well-reasoned decision of the District Court stands.

The foregoing position is buttressed by this Court's opinion in Baker v. State, *supra*, where in a detailed opinion, this Court reaffirmed efficacy of the standard jury instruction that defines structure as "any building of any kind either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure" (emphasis added), *Id.*, 19 Fla. L. Weekly at S275.<sup>1</sup> That the property in Baker was enclosed, secluded by shrubs, privacy fence and chain link fence was critical. Here, the

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<sup>1</sup> The District Court cited this standard jury instruction in its decision. (A-2, fn.1).

District Court specifically found no evidence of enclosure. The analysis clearly establishes that the present attack upon the decision herein is spurious.

Unlike the Hamilton decision, 19 Fla. L. Weekly D2441 (Fla. 2d DCA November 16, 1994), cited by Petitioner as a basis for jurisdiction, the decision at bar passes upon no question certified by the Fourth District to be of great public importance. Hence, there is no jurisdiction basis to review the decision of Respondent's case. Article V, Section 3(b)(4), Florida Constitution.

Accordingly, Respondent requests this Court to DENY jurisdiction in the instant cause.

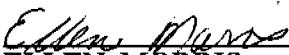


**CONCLUSION**

Based on the foregoing arguments and the authorities cited therein, Mr. Bain respectfully requests this Court to DENY jurisdiction in his case.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Georgina Jimenez-Orosa, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 33401-2299 this 14<sup>th</sup> day of March, 1995.

  
ELLEN MORRIS  
Counsel for Appellant