IN THE SUPREME COURT OF FLORIDA

WALTER LEE RATLIFF,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 87,542

AMENDED RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

FLORIDA STATUTES

OTHER

PRELIMINARY STATEMENT

Petitioner, Walter Lee Ratliff, was the defendant in the trial court. This brief will refer to Appellant as such, Defendant, or by proper name. Respondent, the State of Florida, was the prosecution below. The brief will refer to Appellee as such, the prosecution, or the State.

The symbol "R" will refer to the record on appeal and the symbol "T" will refer to the transcript of trial court proceedings. "IB" will designate Appellant's Initial Brief, while the symbol "PB" will refer to the Petitioner's Brief in this Court. Each symbol is followed by the appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Unfortunately, the Respondent cannot accept the Petitioner's statement beyond its bare chronology. Contrary to ***Fla.R.Cr.P. 9.210,*** the statement is unduly argumentative and includes misstatements of fact, such as the allegation that the Petitioner was not allowed to argue to the jury that the house he burglarized

was not a "dwelling". The Petitioner has failed to present a complete and fair representation of the facts, with all inferences and disputed facts taken in favor of the judgment. ***Thompson v. State, 588 So.2d 687 (Fla. 1991)*** The Respondent would be remiss in accepting the Petitioner's statement. ***Overfelt v. State, 434 So.2d 945 (Fla. 4th DCA 1983)*** The actual facts are as follows:

The Petitioner was charged by Information with the felonies of Burglary (of a dwelling), Grand Theft and Battery on a Law Enforcement Officer for crimes committed on January 24-25, 1994. (R. 8) A defense motion for severance was granted (R. 43) and Ratliff received a separate jury trial on the burglary charge.

The testimony at trial, taken in a light favorable to the judgment as required, established that the Petitioner and an accomplice broke into a dwelling on January 24, 1994. (T-88) A chandelier was stolen from the new home. (T.88) The dwelling was fully built (completed) and passed its final inspections the very next day. (T 122-23) *It was not "under construction" as alleged by petitioner.* The utilities were on, and a dishwasher was installed, although the home was unfurnished and lacked other appliances. (T-112)

The Petitioner was specifically permitted to argue that the house was not a dwelling, using his theory that no one lived in the

place, and Petitioner made his arguments at (T 162-167) and again in rebuttal at (T. 180-181). The only argument that was disallowed was the argument that the law required the current owner (the construction company) to live in the house in order for it to be a dwelling. (T. 179)

The Petitioner was convicted of burglary of a dwelling and appealed to the First District Court of Appeal, raising two issues:

1) Whether the trial court erred by denying the Appellant's motion for judgment of acquittal since the state failed to prove that the structure was a dwelling, "in violation of Appellant's right to due process of law" under the state and federal constitutions.

2) Whether the trial court erred by denying Appellant's motion for mistrial after precluding the Appellant from arguing that the structure was not a dwelling.

The First District rejected these specific claims without opinion, focusing upon the threshold question of statutory construction which forms the basis of this certified question.

SUMMARY OF ARGUMENT

The Petitioner has filed a three point brief which does not directly address the certified question posed by the District Court of Appeal. Instead, relying upon an egregious view of the facts, the Petitioner reargues the "judgment of acquittal" issue and the "final argument" issue; adding a third claim (regarding jury instructions) that was not specifically raised in the District Court.

The certified question should be answered in the affirmative, since the law governing statutory construction in Florida is unequivocal in holding that the common-law definitions of crimes are superseded by legislation.

ARGUMENT

CERTIFIED QUESTION PRESENTED

> DO THE 1982 AMENDMENTS TO CHAPTER 810, FLORIDA STATUTES, SUPERSEDE THE COMMON-LAW DEFINITION OF A DWELLING, WHEREBY A STRUCTURE'S DESIGN OR SUITABILITY FOR HABITATION, RATHER THAN ACTUAL OCCUPANCY OR INTENT TO OCCUPY, IS CONTROLLING IN DETERMINING WHETHER A STRUCTURE CONSTITUTES A DWELLING?

The Petitioner does not address the certified question due to the fact that it is not possible to defend his position by that route. Accordingly, the Petitioner has attempted to deflect the inquiry with three irrelevant and improper "merits" arguments having little or nothing to do with the question at bar, including one issue not even raised on direct appeal.

The question certified by the District Court is simple: Is a common law definition of a crime superseded by a subsequent act of the Florida Legislature redefining the offense? The answer exists as a matter of fundamental law in this state, and that answer is "yes". ***Section 2.01, Florida Statutes***, states:

> The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law not be inconsistent with the Constitution and laws of the United States and the acts of the Legislature in this state.

As noted in ***Grady v. Coleman, 183 So. 25 (Fla.1938)***, this section explicitly means that the common law definition of a crime does not survive any action by the Legislature redefining that offense. Thus, when the Florida Legislature redefined the definition of a dwelling in 1982, it acted within the scope of its Constitutional authority, and redefined "dwelling" in a manner binding upon the courts. See, ***State v. Hamilton, 660 So.2d 1038 (Fla. 1995)***

The First District's decision, here and in ***Perkins v. State, 630 So.2d 1180 (Fla. 1st DCA 1994),*** to apply the definition enacted by the Florida Legislature was clearly correct under § 2.01, and clearly deserves an affirmative answer to the certified question.

As noted before, the Petitioner cannot contend with the certified question so, tactically, he is reduced to using this opportunity to reargue two points raised on appeal and, improperly, trying to inject a new "jury instruction" claim which should have been separately raised on direct appeal, but was not. The three claims will be addressed as sub-points, as follows:

A. Denial of the Motion For Judgment of Acquittal

The Petitioner comes closest to arguing the certified question in this particular point on appeal. Essentially, the petitioner suggests that the definition of "dwelling" is "ambiguous", and that

the alleged ambiguity serves to reinstate the common law definition of "dwelling" regardless of the intent of the legislature.

The statute in question is not the least bit ambiguous. "Burglary" refers to the unauthorized entry (or remaining in) a "dwelling, structure or conveyance". ***Sec. 810.02, Fla. Stat.*** The term "dwelling" is defined in **§ *810.011*** as:

> ...a building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 ...the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

The definition of a dwelling relates to design and intended use, not actual or present use. Indeed, the latter portion of the statute refers to structures that are no longer habitable due to natural or other disasters, yet still meet the definition of a "dwelling" because of what they were. Semantics and sophistry, applied with zeal to any statute, can fluff up "ambiguity". We are required, however, to intelligently read statutes in a manner consistent with constitutionality and legislative intent. The Petitioner's approach would compel the courts to apply unnatural and unintended constructions to statutes in a search for some

"Achilles Heel" that would render them unenforceable. This standard should not be adopted.

To the extent the Petitioner relies upon the standard jury instructions, he is respectfully reminded that jury instructions are not statutes and do not stand as independent legal authority in the state of Florida . Thus, the citation is inapt. The Appellant is correct, however, in confessing that in ***Baker v. State, 636 So.2d 1342 (Fla. 1994)*** this Court recognized that the Legislature has completely abrogated the common law in defining "burglary" and terms such as "curtilage".

In Petitioner's cited case of ***L.C. v. State, 579 So.2d 783 (Fla. 3rd DCA 1991)*** the Court recognized that the burglarized home was still a "dwelling" even though the owner had died and no one actually lived there at the time of the offense. In ***State v. Hamilton, 660 So.2d 1038 (Fla. 1995)*** this Court noted that the term "curtilage", unlike the term "dwelling", is not defined in ***§ 810.011, Fla. Stat.,*** and that lack of a definition reinstated the common law definition of the term curtilage. The Petitioner's discussion of ***Hamilton*** overlooks this point entirely.

Finally, the Petitioner suggests that the common law definition must be reread into the statute because the Legislature did not provide a specific statement of intent to abolish the "occupancy"

requirement. The Legislature is presumed to know what it is doing and to mean what it says without providing explanations for its decisions or exhaustive lists of "things not included" in a given statute. Thus, the absence of a statement that the Legislature "did not intend to abolish the occupancy requirement" does not resurrect the common law definition of a dwelling in defiance of legislative intent.

B. The Jury Instruction Issue Was Not Appealed

The Petitioner did not raise the jury instruction issue as a point on appeal in the District Court, yet he raises the novel claim in this proceeding. While the acceptance of jurisdiction opens for review all aspects of the District Court's decision, see ***Rupp v. Jackson, 238 So.2d 86 (Fla. 1970),*** this issue was not raised as a point on appeal in the District Court and, accordingly, is not a part of the lower court's decision. At most, it is a novel issue which should have been raised on appeal, not as a "certified question". Compare, ***Jaworski v. Opa Locka, 149 So.2d 33 (Fla.1963)***

Thus, this issue is not properly before the court under any theory.

C. Restriction on Closing Argument

The Petitioner's final argument is misleading. The Petitioner was not prevented from arguing that the house was not yet a

"dwelling", and, in fact, the Petitioner argued this point at length in front of the jury. The specific argument that was not allowed was the argument that the house was not a dwelling unless the *fee titleholder*, here, the builder, lived in the house. The other aspects of the issue, such as the absence of an actual resident and the condition of the house and the "inspection" issues were all freely argued. The specific argument was not allowed because it was not an accurate statement of the law, and juries are not required to receive inaccurate instructions or arguments. See ***Spaziano v. Florida, 468 U.S. 447 (1984)*** This issue would be moot, of course, if the certified question were to be correctly answered in the affirmative, since at that point even the argument that was allowed would have been improper.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court answer the certified question in the affirmative and affirm the decision of the District Court.

Respectfully submitted,

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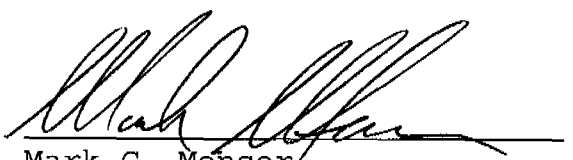
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished by U.S. Mail to Phil Patterson, Esquire, Assistant Public Defender, Leon County Courthouse, Suite 401 North, 301 South Monroe Street, Tallahassee, Florida 32301, this 25th day of April, 1996.



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