FILED
SID J. WHITE
MAY 8 1996
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

WALTER LEE RATLIFF,

Petitioner,

v. CASE NO. 87,542

STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER'S BRIEF ON THE MERITS

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WALTER LEE RATLIFF,	:	
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vs.	:	CASE NO. 87,542
STATE OF FLORIDA,	:	
Respondent.	:	
______________________	:	

REPLY BRIEF OF PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, Walter Lee Ratliff, was the defendant in the trial court, and the appellant in the First District Court of Appeal. Respondent, the State of Florida, was the prosecution in the trial court, and the appellee in the district court.

The record on appeal will be referred to by use of the symbol "R," and the transcripts of court proceedings by use of the symbol "T," each followed by the appropriate page number.

Petitioner will respond to the state's position on Issue I, in this brief. He will rely on the arguments presented in his Brief on the Merits for Issues II & III.

All emphasis is supplied unless the contrary is indicated.

ARGUMENT

FIRST ISSUE PRESENTED

> THE TRIAL COURT ERRED BY DENYING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL ON THE "DWELLING" ELEMENT OF THE BURGLARY CHARGE BECAUSE THE STRUCTURE AT ISSUE HAD NOT YET BECOME A DWELLING.

Respondent complains that petitioner did not address the certified question in his initial brief. Petitioner respectfully disagrees. See, Petitioner's Brief on the Merits, pages 13-15. Nevertheless, lest there be any misunderstanding, petitioner contends that the legislature did not intended to abandon the common law definition of "dwelling" when it expanded the burglary statute in 1982 to include conveyances.

Section 775.01, Florida Statutes provides:

> The common law of England in relation to crimes, except as far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject.

See also, Section 2.01, Florida Statutes (1995).

In Carlile v. Game & Fresh Water Fish Commission, 354 So. 2d 362 (Fla. 1977), this Court opined:

> "Statutes in derogation of the common law are to be construed strictly, however. They will not be interpreted to displace the common law further than is clearly necessary. Rather, the courts will infer that such a statute was not intended to make any alteration other than was specified and plainly pronounced. A statute, therefore, designed to change the common law rule must speak in clear, unequivocal terms, for the presumption is that no change in the common law is

> intended unless the statute is explicit in this regard (cite omitted). Inference and implication cannot be substituted for clear expression (cites omitted).

Id. at 364.

The legislature amended the definition of "dwelling" in 1982, by adding the phrases, "or conveyances," "mobile or immobile," and " designed to be occupied by people lodging therein at night." S. 810.011(2), F.S. (1983). Nothing in those terms reflects a clear and unequivocal intention by the legislature to abrogate the common law definition of "dwelling." Consequently, there is a presumption that no change in the common law was intended. Carlile v. Game & Fresh Water Fish Commission, supra, at 364.

This Court's precedent and ordinary common sense instruct that, had the legislature intended to abandon the common law definition of "dwelling" when it expanded it to include recreational vehicles, it certainly would have been more explicit in that regard. Id. Stated differently, if the legislature had intended to abrogate the common law definition of "dwelling," it would have said so in clear and unequivocal terms. It did not. Instead, the legislature simply added the words "or conveyances," "mobile or immobile," and "designed to be occupied by people lodging therein at night" to the definition of "dwelling." Petitioner asserts that Judge Ervin was correct when he dissented in Perkins v. State, 630 So. 2d 1180 (Fla. 1st DCA 1994), and wrote:

> [T]he legislature intended to extend the same protection to owners of conveyances which were used as dwellings as had formerly been extended to owners of

> structures used as dwellings, but that it did not intend to abrogate the common-law rule precluding conviction for burglary of a dwelling if the place entered was unoccupied and its owner had no intention to return."

Id. at 1184.

Furthermore, to this day appellate courts in Florida apply the common law definition of "dwelling" in their decisions. See e.g., L.C. v. State, 579 So. 2d 783, 784 (Fla. 3d DCA 1991) ("We agree with appellant's argument that, in amending section 810.011(2), the legislature did not intend to overrule the common-law definition of a dwelling for purposes of the burglary statute). Had the legislature intended to abandon the common law definition of "dwelling" in 1982, it would have made that intention clear in subsequent legislation, and not have waited fourteen years for this Court to address that question. It has not. Therefore, given the continued application of the common law definition of "dwelling" by the appellate courts in this state, and the lack of subsequent legislation on that subject, one must conclude that the legislature did not, and never intended to, abrogate the common law definition of "dwelling."

Furthermore, the rationale for the enhanced penalty for burglary of a dwelling is consistent with this interpretation of the statute. The enhanced penalty for burglary of a dwelling reflects the legislature's intent to provide increased protection for a person's living quarters, be they mobile or immobile. In fact, this policy is reflected in the statutory amendments made in response to the devastation caused by Hurricane Andrew. In 1992, the legislature, intending to protect people's demolished homes and scattered

belongings, again expanded the definition of "dwelling" by including "remnants" of battered homes at their original sites, regardless of the absence of a wall or roof. See, Ch. 92-351, s. 1, Laws of Fla; S. 810.011(2), Fla. Stat. Thus, the legislature reiterated its intent and policy to provide an enhanced punishment for those who burglarize the place where a person lives and stores their intimate personal property - irrespective of the structure's present design.

Respondent's reliance on the isolated phrase "designed to be occupied" as the polestar of legislative intent is misplaced. That phrase was added when the legislature included conveyances to the statutory definition of "dwelling." "Designed to be occupied by people lodging therein at night" describes the class of conveyances that the legislature intended to add to that definition. Accordingly, conveyances that are "designed to be occupied by people lodging therein at night" are now considered dwellings under the burglary statute.

As set out above, if the legislature had intended to abandon the common law definition of "dwelling" it would not have done so in the cryptic fashion suggested by respondent, i.e., by simply adding recreational vehicles to that definition. If the legislature had intended to abandon the common law, it would have done so in clear and unambiguous terms, and it would not have allowed that intention to be ignored by the courts of this state for fourteen years. The fact that the legislature has never specifically, clearly, and unambiguously stated that it intended to abandon the common law definition of "dwelling," leaves intact the presumption that the common law is still in full force and

effect in this state. Carlile v. Game & Fresh Water Fish Commission, supra at 364. This Court must reject the state's contention to the contrary.

CONCLUSION

Based on the foregoing, and Petitioner's Initial Brief on the Merits, this Court must vacate petitioner's conviction for burglary of a dwelling and either enter a conviction for the lesser included offense of burglary to a structure, or remand to the trial court for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Mark C. Menser, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to petitioner, WALTER LEE RATLIFF, on this 8th day of May, 1996.

PHIL PATTERSON