IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

JEREMIAH BUTLER,

Respondent.

CASE NO. 93,499

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Jeremiah Butler, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of five volumes. This brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The appeal of the co-defendant in this case is currently before this Court. Laster v. State, Case No. 92,864.

Respondent was charged by information with attempted second degree murder, two counts of armed robbery, and burglary with assault, and carrying a concealed firearm. (I, 19-20).

At trial, John Williamson testified that his job was to work a shift at the Lil Champ convenience store and close the store

after hours. (II, 121). He testified he was working a normal shift on April 25, 1996. (II, 121-122). He testified he works from 3:00 p.m. until 11:30 p.m. or 12:00 a.m., depending on how long it takes to clean the store. (II, 122). He said he was "servicing the store, draining the barrel, checking the ice machine to make sure there was plenty of ice for customers" when Respondent and co-defendant Laster entered the store around 10:00 p.m. (II, 123). Laster told Williamson to lay down and took Williamson's wallet. (II, 123-124). Respondent took money out of the cash register. (II, 124). The robbers left the store for a "brief moment," then Laster returned and shot Williamson in the head. (II, 126). No witness testified as to what time the store was open to the public.

During Williamson's testimony, the State introduced photographs from the bait clicker that activated when Respondent took money from the cash register. (II, 130-140). The State played a videotape of the crime for the jury. (II, 149-150; State's Exh. 4).

Michael Gordon testified he usually goes to the store between 9:00 p.m. and 10:00 p.m. but does not say whether he goes there after 10:00 p.m. (II, 175).

Curtis Jones, Respondent's uncle, identified Respondent as one of the robbers on the videotape. (III, 232). Respondent's aunt, Linda Jones, also identified Respondent. (III, 276).

Edward Prince testified that Respondent drove to the crime scene and provided the panty hose they used as masks. (III, 304,

307). Respondent admitted to Prince that he committed the crime. (III, 312).

The jury found Respondent guilty of two counts of armed robbery with a firearm, aggravated assault, and armed burglary. (I, 43).

In Butler v. State, 711 So. 2d 1183, 1184 (Fla. 1st DCA 1998), the First District reversed Respondent's conviction for armed burglary, holding that one who enters a building open to the public cannot be convicted of burglary. On rehearing, the First District reversed one of Respondent's armed robbery convictions, holding that there was one victim and only one robbery. Id. The opinion is attached as an Appendix. This Court granted discretionary review by order dated November 16, 1998.

SUMMARY OF ARGUMENT

ISSUE I.

Respondent was convicted of burglary when he entered a convenience store and stole money from the cash register while his accomplice held the clerk at gunpoint and robbed him. The defendants left the store but Respondent's co-defendant returned moments later and shot the clerk. The District Court erred by finding the store was open to the public and reversing Respondent's conviction for burglary. Whether the premises are open to the public is an affirmative defense to burglary and Respondent was required to show some evidence of the defense. Since Respondent did not meet his burden of establishing that the store itself was open to the public when the shooting and robbery took place, the affirmative defense fails and Respondent was properly convicted of burglary. Further, even if the store itself was open to the public, Respondent did not establish that the area behind the counter from which he took the money was open to the public. Since the burden is on Respondent to establish the existence of an affirmative defense and Respondent failed to do so, the District Court's decision reversing Respondent's burglary conviction should be reversed.

Further, even if this Court finds that both the store and the area behind the counter were open to the public, it should find that any consent Respondent had to be in the store was revoked, disapprove the decision of the First District, and affirm the burglary conviction entered in the trial court.

ISSUE II

Respondent was properly convicted of two counts of armed robbery so this Court should reverse the portion of the First District's opinion holding that only one armed robbery conviction is permitted. In Brown v. State, this Court said the dispositive issue in determining whether multiple robberies occurred is whether there is a separate and distinct taking with a separate intent for each transaction. Here, the evidence shows intent to commit multiple robberies. Respondent and his co-defendant entered the store. Respondent emptied the cash register while the co-defendant detained the clerk, who was standing in the aisles of the store, at gunpoint and took his wallet. Their actions show that Respondent intended to rob the clerk and cash register while the co-defendant robbed the store's customers. Since there was intent to commit two robberies, Respondent was properly convicted of two robberies. The portion of the decision of the First District vacating one of Respondent's armed robbery convictions should be reversed and both of Respondent's armed robbery convictions entered in the trial court's order should be affirmed.

ARGUMENT

ISSUE I

WHETHER THE DISTRICT COURT ERRED BY FINDING THE CONVENIENCE STORE WAS OPEN TO THE PUBLIC DURING THE BURGLARY AND REVERSING RESPONDENT'S BURGLARY CONVICTION.

The First District erred by reversing Respondent's conviction for burglary. Respondent had the burden of establishing that the store itself was open to the public when the shooting and robbery took place and failed to do so. Further, even if the store itself was open to the public, Respondent did not establish that the area behind the counter from which he took the money from the cash register was open to the public. Since the burden is on Respondent to establish the existence of an affirmative defense and Respondent failed to do so, the portion of the First District's decision reversing Respondent's burglary conviction should be reversed. Even if this Court finds that the store and the area behind the counter were open to the public, it should approve Garvin v. State, 685 So. 2d 17 (Fla. 3d DCA 1996), and find that any consent Respondent had to be in the store was revoked, disapprove the portion of the decision in this case reversing Respondent's burglary conviction, and affirm the trial court.

Section 810.02(1), Florida Statutes (1995), provides,

> (1) "Burglary" means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.

The language following "unless" sets forth an affirmative defense. Robertson v. State, 699 So. 2d 1343, 1346 (Fla. 1997), cert. den., 118 S. Ct. 1097 (1998); State v. Hicks, 421 So. 2d 510 (Fla. 1982); Collett v. State, 676 So. 2d 1046 (Fla. 1st DCA 1996). The defendant has the burden of going forward with evidence that the affirmative defense exists. Robertson, 699 So. 2d at 1346; Wright v. State, 442 So. 2d 1058, 1060 (1st DCA 1983), rev. den., 450 So. 2d 489 (Fla. 1984); Coleman v. State, 592 So. 2d 300 (Fla. 2d DCA 1991). Once the defendant presents competent evidence of the existence of the defense, the burden of proof remains with the State, and the State must then prove the nonexistence of the defense beyond a reasonable doubt. Robertson; Collett; Wright, 442 So. 2d at 1060.

Here, Respondent presented no evidence that the store was open to the public when the shooting took place and failed to met his burden to establish the affirmative defense. Michael Gordon testified he usually goes to the store between 9:00 p.m. and 10:00 p.m. but did not say whether he goes there after 10:00 p.m. (II, 175). John Williamson testified the incident happened near 10:00 p.m. (II, 123). He said he was "servicing the store, draining the barrel, checking the ice machine to make sure there was plenty of ice for customers" when the robbery occurred. (II, 123). He did not testify whether or not the store was open at that point. He testified he works from 3:00 p.m. until 11:30 p.m. or 12:00 a.m., depending on how long it takes to clean the store (II, 122) but did not say what time the store closes.

"Servicing the store" and "draining the barrel" implies that the store was closed and that he was preparing to leave for the night. Respondent had the burden of presenting some evidence that the store was open to the public in order to use the affirmative defense. All Respondent had to do was ask Gordon or Williamson whether or not the store was open. He did not do so.

Further, Respondent and Laster entered the store, robbed Williamson and the cash register, and left the store. Moments later, Laster returned and shot Williamson in the head. Even if the store was open to the public when the defendants initially entered the store, it was not open for business once the robbery took place. Assuming Respondent and Laster had simply left and not returned to shoot Williamson, the store would have closed for the police investigation of the robbery. It would have been open for the police to conduct their investigation but not to serve customers. At that point, Laster committed burglary when he entered the store with the intent to shoot Williamson and Respondent was properly convicted as a principal. Respondent failed to meet his burden to show that the store was open to the public or that he was invited to enter or remain in the store when his accomplice made his second entry into the store. Accordingly, Respondent's burglary conviction is appropriate.

In contrast to the lack of evidence in this case, in Miller v. State, 713 So. 2d 1008, 1010 (Fla. 1998), this Court specifically found that the store in that case was open. In Collett, there was specific testimony that the vending machines were in an area

open to the public. Collett, 676 So. 2d at 1047. Here, since Respondent failed to present evidence to support the affirmative defense, the State must only prove that Respondent entered or remained in the premises with the intent to commit an offense, § 810.02(1), Fla. Stat. (1995), and was not required to prove the store was closed. The State submits that it met that burden. Since the First District erred by shifting the burden to the State to prove that the store was open, the portion of its decision reversing the burglary conviction should be reversed, and Respondent's conviction for burglary entered in the trial court should be affirmed.

Even if this Court agrees with the First District that the store was open to the public, it should find the area behind the counter where Respondent took the money was not open to the public. When Respondent and Laster entered the store, Laster made Williamson, who was not behind the counter with the cash register, lie on the floor. While Laster held Williamson at gunpoint, Respondent went behind the counter and took money from the cash register. There is no indication that Respondent was ever invited behind the cash register. The area behind the counter was not part of the store that was open to the public. In fact, Respondent had to climb the counter to get there. In Dakes v. State, 545 So. 2d 939, 940 (Fla. 3d DCA 1989), the court held that although the retail store was open to the public when Dakes stole merchandise, the storeroom from which he stole the merchandise was not part of the premises open to the public.

Just as a storeroom is not open to the public, neither is the area behind the cash register and counter. In Downer v. State, 375 So. 2d 840 (Fla. 1979), this Court held that a hospital, although open to the public, can restrict the public's access to certain areas. Such restrictions are commonplace. The courthouse is open to the public during regular hours but the offices of individual judges are not. A convenience store can likewise restrict the public's access to its cash register. The burden is on Respondent to bring forth evidence that the area behind the counter was open to the public. He did not do so. Even if the store was open to the public, the area behind the counter was not, and Respondent was properly convicted of burglary. The portion of the First District's opinion reversing the burglary conviction should be reversed.

If this Court finds that the evidence shows the store and area behind the counter was open to the public, it should still affirm the burglary conviction. Any consent Respondent had to enter the store was withdrawn when Respondent robbed the store. Garvin is directly on point.[1] In Garvin, the court affirmed the defendant convictions of various counts of kidnapping, burglary with an assault while armed, and armed robbery when he robbed a McDonald's restaurant during lunch hour. Garvin, 685 So. 2d at 18. The court said,

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[1]In Laster v. State, 23 Fla. L. Weekly D790 (1st DCA March 24, 1998, rev. granted, case no. 92,864 (Fla. September 11, 1998), the First District certified conflict with Garvin.

> It is undisputed that the restaurant was open to the public at the time of the invasion. It was the middle of the lunch hour and members of the public were there eating. **However, pursuant to the burglary statute, once a consensual entry is made, a consensual "remaining in" begins.** Here, the question for the jury to resolve was whether Garvin remained in the premises with the intent to commit an offense therein after the consent to remain in the restaurant had been withdrawn. Garvin, 685 So. 2d at 18. (emphasis added).

The court continued,

> **We find it sensible that no victim consents to a person's remaining in the premises for the perpetrator's purpose of committing a crime against that victim.** Therefore the jury could have concluded that once the restaurant manager became aware that the assailants were committing a crime, the "remaining in" was no longer consensual. Garvin, 685 So. 2d at 18-19. (emphasis added).

If one assumes that the store was open to the public during the shooting, then the facts here are similar to those in Garvin. Garvin certainly entered McDonald's when it was open to the public. Garvin, 685 So. 2d at 18. Respondent robbed the store at a time the First District found the store was open to the public. However, a store is not open to the public for the purpose of committing crimes. See, e.g., People v. Powell, 586 N.E.2d 589, 598 (Ill. App. Ct. 1st Dist. 1991)("authority to enter a building open to the public extends only to those who enter with a purpose consistent with the reason that building is open"). In State v. Sawko, 624 So. 2d 751 (Fla. 5th DCA 1993), the court held that a "license or invitation to enter only for the purpose of performing services does not necessarily insulate a defendant from a burglary conviction when entry is made for a purpose not authorized." A convenience store is open so

customers can purchase common items. It is not open to the public so that criminals can practice their trade in it. Respondent's invitation to enter the store was so he could buy merchandise, not rob the store and its employee and stand by while his accomplice shoots that employee. Since Respondent did not enter the premises for the purpose it was intended, it is appropriate to analyze, as the Garvin court did, whether or not the consent to be in the store is revoked. In this case, whatever consent Respondent had to be in the store was revoked when Laster detained Williamson at gunpoint while Respondent entered an area closed to the public to steal money. In Laster, the First District claims that Garvin conflicts with the following footnote from Ray v. State, 522 So. 2d 963, 967 n. 6 (Fla. 3d DCA 1988), rev. den., 531 So. 2d 168 (Fla. 1988):

> Happily, we need not concern ourselves with the potential elevation of a shoplifting offense to a burglary. This is so because Section 810.02, Florida Statutes (1987), precludes a burglary charge where "the premises are at the time open to the public." That the premises are open to the public is a complete defense to a burglary charge, avoiding the absurd result of State v. Shult, 380 N.W.2d 352 (S.D.1985) (pizza thief guilty of burglary because he entered store with intent to shoplift). See, State v. Graney, 380 So. 2d 500 (Fla. 2d DCA 1980); Arabie v. State, 699 P.2d 890 (Alaska App.1985).

Laster, 23 Fla. L. Weekly at D790. The opinion in Garvin does not conflict with Ray. In Garvin and Ray, the court held that the defendants legally entered the victims' store and home but that they remained there after their consent to be there was revoked. Whether Garvin would have been convicted of burglary had he merely shoplifted while in McDonald's was not before the

court in Garvin, was not before the District Court below, and is not before this Court in this case. The First District's comparison of this case with an inapplicable hypothetical from another case is inappropriate. Whether consent to be in a store is revoked when a defendant commits a shoplifting offense is a question that should be answered in an appropriate case where that issue is before the court and not in this case where such an opinion would merely be an advisory one.

In Laster and in this case, the First District said that the fact that a store is open to the public is a complete defense to burglary. In Miller, this Court rejected the notion that the fact that a store is open to the public is a complete defense to burglary. Miller entered a grocery store, shot the clerk, and stole money from the cash register. Miller, 713 So. 2d at 1009. This Court reversed Miller's burglary conviction because it said that Miller "entered the grocery store when it was open, and on this record we can find no evidence that consent was withdrawn." Id. at 1010. This Court continued:

> Here, the argument was geared towards showing that Miller did not have consent to enter the grocery store to commit a crime. Clearly the store was open, so Miller entered the store legally. There was no attempt to show -- even through circumstantial evidence -- that although Miller entered the store legally, consent was withdrawn. **There must be some evidence the jury can rationally rely on to infer that consent was withdrawn besides the fact that a crime occurred.** (emphasis added). Id. at 1010-1011.

If the burglary statute had made the fact that the store was open to the public a complete defense to burglary, this Court would have said so in Miller. All of the language in Miller about

withdrawal of consent is surplusage if the store being open to the public is a complete defense to burglary. Miller rejects any claim that the fact that a business is open to the public is a complete defense to burglary. If a store is open to the public, Miller holds the State must show that any consent to remain in the store has been revoked in order to support a burglary conviction. This Court reversed Miller's burglary conviction because there was no evidence to show consent to be in the store was withdrawn and not because the grocery store was open to the public. If the State had shown "even through circumstantial evidence," Miller, 713 So. 2d at 1010, that consent had been withdrawn, this Court could have affirmed the burglary conviction. Since no evidence of withdrawal of consent was shown in that case, the conviction was reversed. The conviction in Miller was not reversed, as Respondent might contend it should have been, simply because the store was open to the public.

In this case, there is at least circumstantial evidence that Williamson withdrew whatever consent that Respondent had to remain in the store. Respondent's accomplice entered the store and ordered Williamson to lie down on the floor. At that point, the jury could infer that any consent that Respondent had to remain in the store was withdrawn. In Robertson v. State, 699 So. 2d 1343 (Fla. 1997), cert. den., 118 S.Ct. 1097 (1998), this Court found that the jury could reasonably infer that the victim withdrew her consent for Robertson to remain in her apartment when he "bound her, blindfolded her, and stuffed her brassiere

down her throat." Robertson, 699 So. 2d at 1347. Robertson noted that withdrawal of consent can be shown by circumstantial evidence. Id. See, also, Jimenez v. State, 703 So. 2d 437 (Fla. 1997), cert. den., 118 S.Ct. 1806 (1998)(jury could infer that consent was withdrawn when defendant beat and stabbed victim); Raleigh v. State, 705 So. 2d 1324 (Fla. 1997)(ample circumstantial evidence that consent was withdrawn when defendant shot victim several times and beat him viciously); Garvin, 685 So. 2d at 19 ("even if further evidence of withdrawal of consent was required, the manager's leaving the building to telephone for assistance and the resulting kidnapping were supremely sufficient to show that the consent to remain had been withdrawn). Here, Respondent's accomplice told Williamson to lie down on the floor, took Williamson's wallet, and left the store while Respondent emptied the cash register. Laster returned to the store and shot Williamson moments later. Williamson did not consent to Laster reentering the store and certainly did not consent to be shot. There is ample evidence to show that any consent Respondent had to be in the store was revoked when his accomplice ordered Williamson to lie down, took his wallet, left the store, and returned and shot him.

To hold otherwise leads to an absurd situation where a defendant is convicted of burglary if the victim asks him or her to leave during the commission of the crime but is acquitted of burglary if the victim stands silent as the crimes take place. The State respectfully suggests that this Court's declaration in

Miller that Miller legally entered the store for the purpose of committing a criminal offense because the store was open for legal transactions because no one withdrew the consent to enter gives an absurd meaning to "open to the public." Stores are open to the public for the purpose of conducting legal transactions. The invitation to the public is for the purpose of those legal transactions, not for the purpose of committing criminal offenses. Here, there can be no doubt that Respondent entered the store for the purpose of committing a criminal offense. However, in those instances where a member of the public enters for legal reasons and while on the premises decides to commit an impromptu illegal act, the better reading would be to treat this as a violation of the terms under which the invitation to enter was tendered and a withdrawal of the consent. Presumably, a store owner could meet this Court's criteria by posting signs that the public was invited only for the purposes of legal activities and that consent is withdrawn to any with criminal intent, such as a "Welcome" mat with a fine print footnote setting out the conditions under which the welcome was extended. However, modern life is barbaric enough without requiring as a matter of law that honest citizens treat other honest citizens as if they were criminals by the posting of insulting signs. It should not be necessary for victims of crimes to recite a boilerplate withdrawal of the invitation to enter or to otherwise prove that consent has been withdrawn. A better reading of the burglary statute is the one used in Robertson, Jimenez, and

Raleigh: if the jury can infer, even from circumstantial evidence, that consent to be on the premises was withdrawn, the defendant is guilty of burglary. Garvin applied this simple test and reached an appropriate result. This Court should find that there is sufficient evidence in this case for the jury to find that any consent that Respondent had to be in the store was revoked and affirm the conviction entered in the trial court.

Respondent failed to meet his burden to bring forward evidence the store was open to the public when he committed the robbery. Accordingly, he cannot rely on the affirmative defense that the store was open to the public. Therefore, this Court should reverse the portion of the District Court's order reversing Respondent's burglary conviction and affirm Respondent's conviction entered in the trial court.

ISSUE II

WHETHER THE DISTRICT COURT ERRED BY REVERSING ONE OF RESPONDENT'S CONVICTIONS FOR ARMED BURGLARY.

The First District's holding that two convictions for armed burglary are improper should be reversed. The actions of the defendants clearly show two separate intents to commit two robberies. Respondent intended to rob the clerk and take the money out of the cash register. Laster intended to rob whomever was in the store. His intent was not simply to rob Williamson, the store clerk. He intended to rob any customer who happened to be in the store when he entered. Since there were two separate intents to commit two separate crimes, two robbery convictions were proper. In Brown v. State, 430 So. 2d 446 (Fla. 1983), this Court affirmed Brown's two robbery convictions when Brown ordered two employees to empty two separate cash registers. Even though both cash registers were owned by the same person, this Court explained that actual ownership of the property is not dispositive of whether multiple robberies have occurred and said,

> What is dispositive is **whether there have been successive and distinct forceful takings with a separate and independent intent for each transaction.** Brown, 430 So. 2d at 447. (emphasis added).

Hall v. State, 66 So. 2d 863 (Fla. 1953), held that two larceny convictions were appropriate when cattle belonging to two different owners was stolen from two different pastures. Here, there were two intents to commit two separate crimes. Respondent intended to rob the clerk and cash register while Laster robbed the customers. It is clear that each criminal knew that the

property they were stealing belonged to different owners - store employees do not routinely hold their personal money in the cash register nor hold the store's money in their wallets. There were separate intents to commit separate crimes on separate victims. Two convictions were appropriate in this case.

In Lovette v. State, 636 So. 2d 1304, 1305 (Fla. 1994), Lovette and co-defendant Wyatt entered a Domino's pizza store. While Lovette held the store manager at gunpoint and waited for the time-lock on the store safe to open, Wyatt stole another employee's shirt to use as a disguise. Lovette, 636 So. 2d at 1305-1306. This Court held that Lovette was properly convicted of both robbery of the store and robbery of the shirt. Id. at 1307. In Santos v. State, 644 So. 2d 171, 172 (Fla. 4th DCA 1994), the court refused to accept the State's concession of error and affirmed two armed robbery convictions when Santos and a co-defendant obtained money from a store safe and the co-defendant stole two necklaces from an employee. In both of these cases, it is clear that the defendants intended to commit more than one crime. Here, it is clear Respondent intended to commit more than one crime. Respondent should be guilty of both the robbery of the store and the robbery of Williamson.

Simply because there was only one person in the store should not preclude multiple armed robbery convictions. In Nordelo v. State, 603 So. 2d 36, 37 (Fla. 3d DCA 1992), the court reversed one of Nordelo's two armed robbery convictions stemming from an incident when Nordelo took money from a store cash register, beat

the clerk, and took the clerk's wallet. The court found that the two takings were "part of one comprehensive transaction to confiscate the sole victim's property." Nordelo, 603 So. 2d at 38. The Nordelo court refused to hold that multiple thefts from a single victim would always be only one robbery, stating:

> We are also reluctant to state an absolute rule of law that becomes immutable. Thus, we stop short of ruling that in all cases, multiple takings from one victim always constitute one transaction. Id. at 39.

Similarly, in Horne v. State, 623 So. 2d 777 (Fla. 1st DCA 1993), the First District found only one robbery occurred under the facts of that case but did not state an absolute rule that only one robbery conviction is possible when there is only one victim. In Horne, the court noted there was no "temporal or geographic break" between the takings. There is no indication in Santos that more than one employee was present. In Green v. State, 496 So. 2d 256, 258 (Fla. 5th DCA 1986), the court affirmed two armed robbery convictions for armed robbery of one victim when the defendant took the victim's money in one office, moved her to another office, and took her car keys. In this case, the fact that two robbers entered the store and each went to different areas indicates intent to commit two robberies. The property taken belonged to different victims. Respondent took money from the convenience store cash register while Laster took money from Williamson in another location. The different areas of the store, separated by the store's counter, is a sufficient geographic break to permit two convictions for robbery.

The First District's opinion on rehearing in Butler ignores Brown's teaching that what is dispositive in determining whether there are multiple robberies is whether there are successive and distinct intents and forceful takings for each transaction. Rather than creating a strict rule that only one robbery can occur if there is only one victim, this Court should continue to examine whether there are separate intents for separate takings. Under the facts of this case, applying Brown, two convictions are appropriate. This Court should disapprove the opinion of the First District and affirm the convictions entered in the trial court.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of the District Court of Appeal reported at 711 So. 2d 1183 (Fla. 1st DCA 1998) should be disapproved, and the judgment and sentence entered in the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S INITIAL BRIEF ON THE MERITS has been furnished by U.S. Mail to Phil Patterson, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 11th day of December, 1998.

L. Michael Billmeier
Attorney for the State of Florida

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