IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-21

ADAM JONES,

Respondent,

vs.

STATE OF FLORIDA,

Petitioner.

PETITIONER'S REPLY BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

JAMES J. CARNEY
Assistant Attorney General
Florida Bar No. 475246
1655 Palm Beach Lakes Blvd.
Suite 300
West Palm Beach, FL 33401-2299
Telephone: (561) 688-7759

Counsel for Petitioner

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for the State of Florida, Petitioner herein, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

TABLE OF CONTENTS

AUTHORITIES CITED

Cases Cited

Statutes Cited

PRELIMINARY STATEMENT

Respondent was the defendant in the trial court and District Court below and will be referred to herein as “Respondent” and “Defendant”. Petitioner, the State of Florida, was the prosecution in the trial court below and will be referred to herein as “Petitioner” or “the State”. Reference to the record on appeal will be by the symbol “R”, reference to the transcripts will be by the symbol “V”, followed by the volume number reference to any supplemental record or transcripts will be by the symbols “SR[vol.]” or ST[vol.].”

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statement of the case and facts in its initial brief.

SUMMARY OF THE ARGUMENT

The trial court properly concluded that the State had presented a prima facie case for burglary when it was shown Respondent removed the vehicle's hubcaps in order to expose and remove the lug nuts found underneath. Once it was determined the hubcaps and lug nuts were part of the conveyance, it was a question for the jury whether the Defendant entered the automobile with the intent to commit an offense therein.

ARGUMENT

THE FOURTH DISTRICT ERRONEOUSLY RULED THAT REMOVAL OF HUBCAPS AND LUG NUTS FROM THE CAR DID NOT SATISFY THE ELEMENTS OF ENTRY AND INTENT TO COMMIT A CRIME WITHIN A VEHICLE.

Respondent's reliance on State v. Stephens, 601 So. 2d 1195 (Fla. 1992) is misplaced. The sole issue before this Court in Stephens was whether a defendant was guilty of burglary when he entered the vehicle for the purpose of taking the vehicle, not committing an offense therein. The language relied on by Respondent is *dicta*. Stephens did not discuss Section 810.011(3), Fla. Stat. (1997), which clearly indicates that a perpetrator is considered to have entered a conveyance when he takes apart any portion of the conveyance. Thus, Stephens is not dispositive of the instant issue before this Court.

Assuming arguendo, that this Court finds the Stephens has some applicability here, this Court should recede from the language in Stephens relied on by Respondent. See Baker v. State, 636 So. 2d 1342 (Fla. 1994)(Courts are obligated to follow the wording of the burglary statute, which has completely abrogated and superseded the common law crime of burglary).

CONCLUSION

Based on the foregoing arguments and the authorities, this Court should reverse the Fourth District's decision.

Respectfully submitted,
ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

JAMES J. CARNEY
Assistant Attorney General
Florida Bar No. 475246
1655 Palm Beach Lakes Boulevard,
Suite 300
West Palm Beach, FL 33401-2299
(561) 688-7759
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by courier, to: Siobhan Helene Shea, Assistant Public Defender, Fifteenth Judicial Circuit of Florida, The Criminal Justice Building, 421 Third Street, 6th Floor, West Palm Beach, Fl 33401 on March 30, 2000.