ORIGINAL

IN THE SUPREME COURT OF FLORIDA

LENNARD LAPOINT JENKINS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

DCA CASE NO. 5D99-341
Supreme Court Case No. SC00-310

ON DISCRETIONARY REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

S.C. VAN VOORHEES
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 109503
112 Orange Avenue
Daytona Beach, FL 32114
(904) 252-3367

COUNSEL FOR PETITIONER

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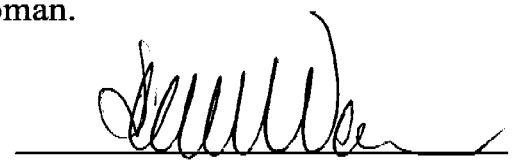
CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.



S.C. VAN VOORHEES
Assistant Public Defender

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

LENNARD LAPOINT JENKINS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	DCA CASE NO. 5D99-341
	)	Supreme Court Case No._____
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	

STATEMENT OF THE CASE AND FACTS

In November of 1997 the defendant snatched a purse from the possession of a woman pedestrian by reaching out from the window of a passing car and grabbing the strap of the purse. (R 41)[1] The car was being driven by the defendant's girlfriend. (TR 62) It was proceeding slowly past the woman in a parking lot when the defendant grabbed the purse. (TR 33) The car nudged the woman's hip as it passed, but the impact did not knock her down and caused no permanent injury to her hip. (TR 33, 48) The effect of the defendant's yank on the purse as the car passed was sufficient to pull the woman off her feet. (TR 34)

[1]References to the record of documents filed with the Clerk of Court are cited herein as (R); those to the transcript of the trial as (TR); those to the supplement to the trial transcript, as (TRS); those to the transcript of jury selection, (JS); those to the transcript of the hearing on the motion for JOA and new trial, (HT); and those to the transcript of the sentencing hearing, (ST)

The fall caused contusions to the woman's knees and elbows, and the fracture of a bone in the woman's upper arm. (TR 36)

The defendant's girlfriend then drove the car off, but it was stopped by the police and the defendant was arrested.

The state filed an information charging the defendant with one count of principal to armed robbery with a weapon, to wit: a motor vehicle; a second count of principal to aggravated battery by great bodily harm; and a third count of principal to aggravated battery with a deadly weapon, to wit: a motor vehicle. (R 50, 51)

Motions for judgement of acquittal were made on the ground that the car did not legally qualify as a weapon under the facts of the case. (R 82-86, TR 84-100, 129-131) The position taken by the state in opposition to the defendant's motions was to argue that the defendant had intentionally used the forward impetus of the car to assist in pulling the victim off her feet during the actual purse snatch itself, thus using the car as a weapon. (TR 88-90)

The jury returned verdicts of guilty as charged on all counts. A post-verdict motion for judgement of acquittal and new trial was filed, (R 82-86), and denied after being argued to the court at a post-trial hearing. (R 140, MT 1-15)

A sentence of two concurrent 20-year sentences: one for the armed-robbery, and one for the principal to aggravated battery count was imposed on February 3, 1999. (R 38) A notice of appeal was filed on February 4, 1999. (R 155), and the case was appealed to the 5th DCA.

On December 3, 1999 the 5th DCA affirmed the trial court, finding that "We agree with the lower court that the evidence was sufficient for a jury to find that the automobile was used as a weapon."

A motion for rehearing En Banc was filed on December 14, 1999, and denied on January 14, 2000.

SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal in this case conflicts with the previous decision of The Florida Supreme Court in State v. Houck, 625 So.2d 359 (Fla. 1995). This conflict confers discretionary jurisdiction on the Florida Supreme Court in conformity with Rule 9.030(a)(2)(A)(iv) of the Florida Rules of Appellate Procedure.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT IS IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW.

In its decision in the instant case, the 5th DCA wrote:

> "We agree with the lower court that the evidence was sufficient for a jury to find that the automobile was used as a weapon"

This holding was in express and direct conflict with the ruling of the Florida Supreme Court in State v. Houck, 625 So.2d 359 (Fla. 1995), wherein Justice Wells used the following language:

> "... it is for the court to determine whether what is used in the commission of a felony is a weapon within the meaning of the statute." State v. Houck, 625 So.2d 359 (Fla. 1995)

Justice Wells was affirming the rationale of an earlier 5th DCA decision in Houck v. State, 634 So.2d 180 (5th DCA. 1994) as follows:

> "...the original panel was in error in deeming the issue of whether a paved surface is a weapon to be one of fact. It is not. It is a question for the court to determine as a matter of law. The failure of the statute to broadly define the term "weapon" cannot be cured by jury speculation." Houck v. State, 634 So.2d 180 (5th DCA. 1994)

Hence, the ruling of the 5th DCA in the instant case is in direct conflict with the Florida Supreme Court decision of State v. Houck, 625 So.2d 359 (Fla. 1995)

The conflict inheres in the fact that in the instant case the 5th DCA has ruled that the jury is to decide as a matter of fact whether an item used in a crime should be considered a weapon within the meaning of a statute, while the Florida Supreme Court has previously ruled that this is a decision to made by the court as a matter of law.

CONCLUSION

BASED UPON the argument and authorities contained herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the decision entered by the Fifth District Court of Appeal in this case.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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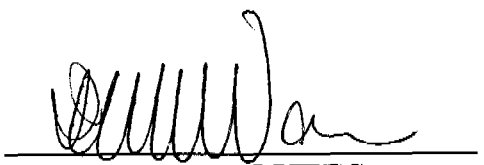
Attorney for Petitioner/Appellant

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY, that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Lennard Lapoint Jenkins, Inmate #T05748, Central Florida Reception Center, P. O. Box 628050, Orlando, FL 32862-8050, on this 8th day of February, 2000.



S.C. VAN VOORHEES
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

LENNARD LAPOINT JENKINS, Petitioner, vs. STATE OF FLORIDA, Appellee.	)	DCA CASE NO. 5D99-341 Supreme Court Case No._____

APPENDIX

A - Jenkins v. State, 24 Fla. L. Weekly D2693 (Fla. 5th DCA December 3, 1999).

B - Petitioner's Motion for Rehearing and Rehearing En Banc

C - Fifth District Court of Appeal Order denying Motion for Rehearing and Motion for Rehearing En Banc

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SEVENTH JUDICIAL CIRCUIT

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COUNSEL FOR PETITIONER

judge dated July 12, 1999, requested a hearing. Despite this, no hearing was set and no ruling was made. Rule 2.160, by affirmatively requiring the trial judge to rule immediately on the motion to disqualify, does not permit the court to accept a passive role when confronted with such motion. The rule requires affirmative action. Judge Dickey failed in this case to order an expedited hearing and/or rule on the motion for over two months despite the clear directive of Rule 2.160.

Our conclusion is simple: a trial judge, confronted by a motion for disqualification, is obligated to dispose of that motion by "an immediate ruling" pursuant to Florida Rule of Judicial Administration 2.160. If the judge affords a hearing to the parties on that motion, it must be an expedited one. (DAUKSCH and GRIFFIN, JJ., concur.)

* * *

Criminal law—Armed robbery with weapon—Jury's finding that automobile was used as a weapon was supported by sufficient evidence, including evidence that victim was walking in parking lot with purse over her shoulder, victim was bumped in the hip by automobile in which defendant was passenger, and defendant reached through open window and grabbed purse strap, thereby yanking victim to the ground and dragging her along pavement until she relinquished her hold on her purse

LENNARD LAPOINT JENKINS, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 99-341. Opinion Filed December 3, 1999. Appeal from the Circuit Court for Volusia County, William C. Johnson, Jr., Judge. Counsel: James B. Gibson, Public Defender, and S.C. Van Voorhees, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Wesley Heidt, Assistant Attorney General, Daytona Beach, for Appellee.

(GRIFFIN, J.) Lennard L. Jenkins ["Jenkins"] appeals his judgment and sentence for armed robbery with a weapon.[1] We affirm.

On November 22, 1997, Jenkins, seated in the passenger seat of an automobile driven by his female co-defendant, snatched a woman's purse in the Best Buy parking lot in Daytona Beach. The vehicle bumped the victim's hip and Jenkins reached through the open window grabbing the purse strap, thereby yanking the victim to the ground and dragging her along the pavement until she relinquished her hold on her purse. The victim sustained a fractured upper arm, contusions on her knees and elbow and asphalt burns.

After grabbing the purse, the car drove off, pursued on foot by members of the victim's family and other "good Samaritans." The police quickly apprehended the couple and Jenkins confessed to snatching the purse. The State charged Jenkins with: (1) principal to armed robbery with a weapon, to wit: an automobile and (2) principal to aggravated battery.

The court conducted a jury trial on November 12, 1998. At trial, the victim testified that the force of the automobile caused her injuries:

> A. I was no more than two cars' length away, two cars from where I just parked my car. All of a sudden I got hit in my hip. The first thing I said, "This guy just hit me in the hip with this car." And the next thing I knew the purse, the strap of my purse, was being tugged off from my shoulder and I immediately grabbed the bulk of my pocketbook with my left arm to hold it close to me. He kept pulling it towards me, the purse kept getting tugged ahead.
>
> * * *
>
> Q. Now, when you say this arm came out and grabbed your hand, the purse at that point was in the process of being tugged at the same time?
>
> A. Yes.
>
> Q. So what happens after this arm grabs your hand?
>
> A. The car began to accelerate and I was still with my right hand trying to hold the strap that I was clinging to. As the car accelerated I started to lose ground, and that's when I went down. I fell. I was dragged along the asphalt. And the pocketbook was gone. I actually saw the strap had been broken in the air. It was gone.

She also testified that she was dragged by the automobile until she surrendered the purse:

> Q. Once you fell to the ground, you said you were dragged. Do you know how far you were dragged?
>
> A. I don't honestly remember how long I was being dragged, but it seemed like forever at that time. But once I felt the actual burning and the ripping of my skin, I just gave up.

On cross-examination, the victim reiterated:

> Q. Now, as I understand it, when you first become [sic] aware there was a problem, you were bumped on the hip by the car; is that correct?
>
> A. That's correct.
>
> Q. Did this knock you out?
>
> A. I wasn't just bumped, I was hit.

The victim testified that she sustained permanent scarring and underwent numerous physical therapy sessions.

Jenkins moved for judgment of acquittal at the close of the State's case and renewed it at the close of his own arguing that, as a matter of law, the car was not used as a weapon. The court denied both motions. The jury returned a verdict of guilty as charged on all counts. Jenkins filed a post-verdict motion for judgment of acquittal and for new trial. The trial court denied the motions.

On appeal, Jenkins contends that the trial court erroneously denied his motion for judgment of acquittal and for new trial. According to Jenkins: "[T]he central issue on appeal, is whether, in the specific circumstances of this case, the car was to be classed as a weapon so as to enhance a strong-arm robbery to an armed robbery." We agree with the lower court that the evidence was sufficient for a jury to find that the automobile was used as a weapon. The notion that the evidence at trial does no more than show that the vehicle was used as transportation to and from the site of the purse snatching ignores the victim's description of events. At the very least, it is a jury question whether the automobile was used as a weapon.

The dissent's discussion of *Jackson v. State*, 662 So. 2d 1369 (Fla. 1st DCA 1995), is not without interest and if we were faced with deciding whether a car could be "carried" as a weapon within the meaning of Section 812.13(2)(b), we might or might not embrace the First District's view. The issue plainly has not been raised as an issue on appeal, however, and we do not reach it.

AFFIRMED. (DAUKSCH, J., concurs. HARRIS, J., dissents, with opinion.)

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[1] § 812.13(2)(b), Fla. Stat. (1997).

(HARRIS, J., dissenting.) I respectfully dissent.

In this parking lot purse snatching incident which went awry, Jenkins was convicted of armed robbery with a weapon (automobile) and aggravated battery. He was sentenced to twenty years in prison on each count. Jenkins appeals only the finding of the enhancer (automobile) which increased the robbery count from a second degree felony to a first degree felony.

The issue in this case is whether an automobile can ever be a weapon under the provisions of section 812.13(2)(b), Florida Statutes, and, if so, whether the State proved that the automobile was a weapon based on the "purpose" of its use in this purse snatching incident. The above-cited statute enhances a robbery "if in the course of committing the robbery the *offender carried a weapon*."

The victim herein testified that while she was walking in the parking lot of Best Buy with her purse over her shoulder: "[A]ll of a sudden I got hit in my hip. The first thing I said, 'this guy just hit me in the hip with his car.' And the next thing I knew the purse, the strap of my purse, was being tugged off my shoulder and I immediately grabbed the bulk of my pocketbook with my left arm to hold it close to me. He kept pulling it towards me, the purse getting tugged ahead." The victim was then specifically asked: "Do you see a car or do you see hands on you or anything like that?" She responded: "What I saw was a black arm reach out of the car and pull my left hand away from where I was holding the bulk of my purse towards in. That's what I saw." The victim ultimately tripped and fell to the ground as the automobile accelerated as both Jenkins, a passenger

Jackson, it constituted a weapon. However, I do not believe that the mere use of an automobile to assist in the commission of a crime, without showing a purpose to injure or intimidate the victim by the use of the automobile, makes that automobile a weapon even under the *Jackson* interpretation of the statute.

---

[1]I recognize Holmes' "experience" argument to the contrary.

[2]The issue on appeal in this case was the following: "The court erred in denying the defendant's motions for judgment of acquittal and for a new trial on the armed robbery count because the car used in the offense was not legally to be considered a weapon." Hence, the issue was properly raised. Does the answer to this issue really change because appellant, in deference to the First District, did not argue that the statute simply did not make a vehicle a weapon under the robbery statute?

[3]In this case, there is no reason for the trial court to be embarrassed in any event. In the absence of a contrary ruling by this court, the trial court was required to follow *Jackson*. It did so.

[4]The absurdity which concerned the *Jackson* court is that a strict reading of the statute means that one's robbery sentence can be enhanced if he carries brass knuckles during the offense but cannot be enhanced if he runs over his victim with a vehicle. Such is the problem of permitting the legislature to enact laws. Since the legislature could have eliminated all enhancers, it can pick and choose such enhancers as it deems most appropriate. In this instance, it seems to have concentrated on those weapons most commonly associated with robbery—hand held weapons—and has left it to the State to prosecute one who uses a vehicle to intentionally injure another under the attempted murder or aggravated battery statutes.

[5]In this case, the automobile was alleged merely to be a weapon under section 812.13(2)(b). Had the offender carried a firearm then under section 812.13(2)(a) an even greater enhancer would have applied.

* * *

Criminal law—Evidence—Confession—Voluntariness—Record supports trial court's determination that defendant's taped confession was knowing and voluntary—Officer's affirmative response of "uh huh" to defendant's question concerning whether he could have a lawyer in to talk with him was adequate, and detective waited several seconds for defendant to ponder the response before moving on and obtaining defendant's equivocal verbal waiver of counsel and unambiguous written waiver

JERMAINE O. LEWIS, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 98-1607. Opinion Filed December 3, 1999. Appeal from the Circuit Court for Brevard County, Warren Burk, Judge. Counsel: James B. Gibson, Public Defender, and Noel A. Pelella, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Lori E. Nelson, Assistant Attorney General, Daytona Beach, for Appellee.

(GRIFFIN, J.) We find no error in the issue raised on appeal and affirm the defendant's judgments and sentences for first-degree felony murder, armed burglary of a dwelling and two counts of robbery with a firearm. One of the issues raised below, however, merits discussion in light of the recent opinion of the Supreme Court of Florida in *Almeida v. State*, 737 So. 2d 520 (Fla. 1999).

Jermaine O. Lewis ["Appellant"] contended below and on appeal that his confession to participation in the robbery during which Phillip Quarno was killed should be suppressed because his waiver of his Miranda rights was not knowing and voluntary. He relies on evidence adduced at the hearing below that he is at the borderline of mental retardation, possesses the sophistication and verbal skills of a nine-year-old, and is dyslexic. The lower court, after reviewing appellant's taped confession and hearing the testimony of appellant and the detective who concluded the interview, determined that the confession was knowing and voluntary. There is evidence in the record to support that conclusion.

In support of the involuntariness argument, appellant referenced the following colloquy concerning his *Miranda* rights:

> AGENT BARNETT: Okay, Jermaine. Like I told you before we got started here, I've got this preamble here I'm going to read to you and make sure you understand everything. Then we'll get started; okay?
>
> So I'm going to read it to you verbatim—move your cup over here—it says:
>
> I, Jermaine O. Lewis, have been advised and had explained to me my Constitutional rights as follows:
>
> Number one, I have the right to remain silent.
>
> Number two, anything I can say can and will be used against me in a court of law.
>
> Number three, I have the right to talk to a lawyer and have him present with me while I'm being questioned.
>
> Number four, if I cannot afford to hire a lawyer, one will be appointed to represent me before any questioning, if I wish one.
>
> Number five, I understand that this interview and interrogation can and will be stopped at any time upon my request.
>
> Now do you understand each of those rights?
>
> THE DEFENDANT: (No audible response.)
>
> AGENT BARNETT: Is that a yes?
>
> THE DEFENDANT: Yeah, yeah.
>
> AGENT BARNETT: Okay. The A Section —
>
> THE DEFENDANT: What you saying? That I can have a lawyer in here to talk with me?
>
> AGENT BARNETT: Uh-huh. Let me explain something to you. What I want to do is, I read this over to you.
>
> THE DEFENDANT: Uh-huh.
>
> AGENT BARNETT: If you have a problem with something, you let me know; okay?
>
> What this says here, it says: "I understand each of these rights that have been explained to me."
>
> If you understand everything, I just want you to initial that.
>
> THE DEFENDANT: Yeah.
>
> AGENT BARNETT: Okay. And then B: "Knowing these rights, I do or do not wish to talk to you at this time."
>
> I need you to circle one of those, and then also initial there and sign there.
>
> Now I know you're concerned about the lawyer, okay?
>
> I understand you've already told your mom and dad a little about what's going on, and your sister a little bit about what's going on. And we've kind of talked to them, so —
>
> THE DEFENDANT: I ain't concerned about a lawyer. I'm concerned about my life.
>
> AGENT BARNETT: Well, I understand that.

The lower court addressed the appellant's contention in his motion to suppress that the above constituted an equivocal request for counsel. Citing to *Davis v. United States*, 512 U.S. 452 (1994) and *State v. Owen*, 696 So. 2d 715 (Fla.), *cert. denied*, __ U.S. __, 118 S. Ct. 574 (1997), the court denied that suppression ground. Recently, however, in *Almeida*, the high court clarified *Davis* and *Owen*, drawing a distinction between the equivocal evocation of a right and the posing of a question concerning those rights. The court held:

> [W]e hold that if, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer. To do otherwise—i.e., to give an evasive answer, or to skip over the question, or to override or "steamroll" the suspect—is to actively promote the very coercion that *Traylor* was intended to dispel. A suspect who has been ignored or overridden concerning a right will be reluctant to exercise that right freely. Once the officer properly answers the question, the officer may then resume the interview (provided of course that the defendant in the meantime has not invoked his or her rights). Any statement obtained in violation of this proscription violates the Florida Constitution and cannot be used by the State. *See Traylor*, 596 So.2d at 966.

Id. at 525.

Here, the appellant's question fits within the "clear question" category covered by the *Almeida* decision. The transcript leaves open to debate whether the police response to the query was adequate. As the transcript reveals, the detective answered this question with a simple "un huh." This response does barely meet the letter of the holding in *Almeida*, if not its spirit. Far better than the cold transcript, however, the videotape of the interview shows that the "uh-huh" did communicate an affirmative response to the defendant. Further, the detective waited several seconds for the defendant to ponder the affirmative answer before moving on, eventually obtaining appellant's equivocal verbal waiver ("I ain't concerned about a lawyer . . . .") and the unambiguous written

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
STATE OF FLORIDA

LENNARD LAPOINT JENKINS,	)	
	)	
Appellant,	)	
	)	
vs.	)	DCA CASE NO. 99-341
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	

MOTION FOR REHEARING AND MOTION FOR REHEARING EN BANC

The appellee, by his undersigned counsel, and pursuant to rules 9.330 and 9.331, Florida Rules of Appellate procedure, hereby requests this Honorable Court to grant rehearing and rehearing en banc in this cause and/or certification. As grounds, the appellee states:

1. In an opinion filed December 3, 1999, this Court affirmed the determination of the Trial Court that the automobile involved in the case was legally to be considered a weapon for purposes of enhancing the defendant's robbery charge from simple robbery to robbery with a weapon.

The finding of this Honorable Court was as follows:

> "We agree with the Lower Court that the evidence was sufficient for a jury to find that the automobile was used as a weapon. The notion that the evidence at trial does no more than show that the vehicle was used as transportation to and from the site of the purse snatching ignores the victim's description of events. At the very least, it is a jury question whether the automobile was used as a weapon."

(2) In so finding, this Honorable Court has misapprehended the thrust of the defense argument. The central feature of the argument was that the case should not have been submitted

to the jury as an armed robbery case, because the car, used as it was in this case, was, as a matter of law, not to be classed as a weapon. The defense was arguing that the decision as to whether the car was used as a weapon was incorrectly decided by the trial Court as a matter of law. The charge of armed robbery should not have made it to the jury at all, but rather they should have gotten at most a charge of simple robbery. The decision as to armament should not have been made by the jury as one of fact, but rather by the Court as a matter of law. (See Reply Brief, pages 1 &2)

(3) As it presently stands, the decision of this Honorable Court is in direct conflict with the rationale of an earlier 5th DCA decision taken in Houck v. State, as follows:

> "We agree with Houck's argument in his motion for rehearing that the original panel was in error in deeming the issue of whether a paved surface is a weapon to be one of fact. It is not. It is a question for the court to determine as a matter of law. The failure of the statute to broadly define the term "weapon" cannot be cured by jury speculation." Houck v. State, 634 So.2d 180 (5th DCA. 1994)

This Honorable Court found in the Houck case that the weaponhood, or otherwise, of an instrumentality was an issue be decided by the Court as a matter of law. In the instant case, the court has ruled that the weaponhood decision is one to be made by the jury based solely on findings of fact. This leaves the two decisions in direct conflict on a very important point: Should legal considerations be factored in when the question of weaponhood is decided, or may the jury make the decision solely through lay interpretation of the facts?

Accordingly, rehearing of the issue En Banc is necessary to maintain uniformity in the Court's decisions.

(4) This is a point of exceptional importance because the issue of weapons itself is so important as an enhancer in Florida statute and case law. Leaving conflict of this type

smouldering in the case law invites loss of countless hours of judicial effort at the trial level as courts struggle repeatedly with an issue best set at rest at the appellate level.

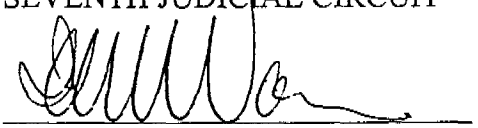
5. I express belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of this Court and that a consideration by the full court is necessary to maintain uniformity of decisions in this Court:

Houck v. State, 634 So.2d 180 (Fla. 5th DCA 1994)

6. I express a belief, based on a reasoned and studied professional judgment, that the panel decision is of exceptional importance.

WHEREFORE, the defendant requests that this Honorable Court grant rehearing and rehearing en banc in this cause, and resolve the issues of : (1) whether the trial court was correct in finding the car to be a weapon in this case, and (2) whether the issue of weaponhood should be decided by the trial court as a matter of law, or by the jury as one of fact; or (3) at least, certify the question to the Florida Supreme Court.

Respectfully submitted,
JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY, that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to: Lennard Jenkins, DC#T05748, Central Florida Reception Center, P.O. Box 628050, Orlando, FL 32862 on this 14th day of December, 1999.

S.C. VAN VOORHEES
ASSISTANT PUBLIC DEFENDER

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

GR-98 SVV

LENNARD LAPOINT JENKINS,
Appellant,

v. CASE NO. 5D99-341

STATE OF FLORIDA,
Appellee.

JAN 14 2000

PUBLIC DEFENDER
7th C.

_____/

DATE: January 14, 2000

BY ORDER OF THE COURT:

ORDERED that Appellee's MOTION FOR REHEARING AND MOTION FOR REHEARING EN BANC, filed December 14, 1999, is denied.

I hereby certify that the foregoing is
(a true copy of) the original Court order.

Frank J. Habershaw

FRANK J. HABERSHAW, CLERK

cc: Office of the Public Defender, 7th JC
Office of the Attorney General, Daytona Beach
Lennard Jenkins