IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC00-404

RONALD WATSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

****

ON PETITION FOR CERTIORARI REVIEW

****

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

CELIA TERENZIO
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

GEORGINA JIMENEZ-OROSA
Senior Assistant Attorney General
Florida Bar No. 441510
1655 Palm Beach Lakes Boulevard
Suite 300
West Palm Beach, Florida 33401
Telephone: (561) 688-7759

Counsel for Respondent

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, Respondent 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

TABLE OF CITATIONS

STATE CASES

STATE STATUTES

RULES

PRELIMINARY STATEMENT

Petitioner, Ronald Watson, was the Defendant and Respondent the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Petitioner was the Appellant and Respondent the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE

The State of Florida accepts Petitioner's Statement of the Case as it appears at page two (2) of the Petitioner's Brief on the merits, subject to the following addition:

The opinion on review in the instant case reads as follows:

> Recently, the supreme court held that Chapter 95-182 was "unconstitutional as violative of the single subject rule contained in article III, section 6 of the Florida Constitution." State v. Thompson, No. 92,831 (Fla. Dec. 22, 1999).
>
> This court has held that only those persons who committed their criminal offenses on or after October 1, 1995 and before October 1, 1996, had standing to challenge Chapter 95-182 on single subject rule grounds. See Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1999), rev. granted, No. 95,663 (Fla. Dec. 3, 1999). According to the second district, the window period for the bringing of a single subject rule challenge closed on May 24, 1997, and not on October 1, 1996. The supreme court declined to rule on the standing issue in Thompson.
>
> Since appellant committed the burglary on October 14, 1996, he does not have standing to challenge Chapter 95-182 on single subject rule grounds. **On the standing issue, we certify conflict** with Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).
>
> On the remaining issue, **we find no error in the trial court's denial of the motion for judgment of acquittal.**

(Emphasis added.) Watson v. State, 25 Fla. L. Weekly D216 (Fla. 4th DCA Jan. 19, 2000).

STATEMENT OF THE FACTS

The State substantially accepts the Statement of the Facts as it appears at pages three and four of Petitioner's Brief on the Merits to the extent it represents an accurate, non-argumentative recitation of the proceedings below. However in compliance with Fla. R. App. P. 9.210(c), and for a complete and fair recitation of the facts, the state hereby submits the following additions, clarifications and modification to point out areas of disagreements between Petitioner and the State as to what actually occurred below.

Ms. Patricia Anne Franklin testified that as she walked into the room, she saw a figure of a man, from waist up (T. 137), inside the window, reaching over on the bed (T. 136). Ms. Franklin was unable to see the man's face, just saw the shape of the face, and could tell he was a black man (T. 137). When she saw the man, she yelled, "who is it?" the man ran (T. 136). So she yelled to her son and nephew, who were in the other room, "catch him." (T. 136), her son and nephew ran as soon as she started screaming (T. 152, 153).

Gailand Maurice Henderson, Ms. Franklin's nephew, testified that as soon as he heard his aunt say "who is this. Who is this. You all get that nigger, you all get him." Mr. Henderson and Ms. Franklin's son immediately ran out of the door after the assailant

(T. 156, 157).

Ms. Franklin testified that there is a wall behind the window to her room, so to leave you cannot go any other way except to go around the back to the front (T. 145). Ms. Franklin testified her apartment is walled-in (T. 147), so the assailant had to go to his left to leave the scene (T. 151). Ms. Franklin saw the assailant run (T. 151), and saw her son and nephew run in the same direction (T. 153).

Mr. Henderson testified that as he heard his aunt scream, he ran out of the apartment (T. 157), so as soon as he came out of the apartment, when he got to the end of the gate, that's when he saw someone coming from behind the back of the apartment running towards the street (T. 157). Mr. Henderson and Ms. Franklin's son ran after the man for two to three minutes, and chased him into the trailer park, where they lost him (T. 157-8). Mr. Henderson was able to see the person's built, and clothes he was wearing (T. 159-160), and gave the police a description (T. 159). Mr. Henderson was positive, the person he chased from his aunt's apartment was the person found under the trailer by the police (T. 160-1, 172).

Road Patrol Officer Cichatello testified that Mr. Henderson and Mr. Pendergrass gave him a detailed description of the clothing the suspect was wearing (T. 181), including the color of the shirt

(T. 198); and described the person as a short black male (T. 191), between the ages of 28 and 35 (T. 198). The person under the trailer matched the description given by the witnesses (T. 184). The person was Petitioner (T. 183), and the witnesses identified Petitioner as the person they chased from Ms. Franklin's apartment (T. 184).

When Officer Cichatello searched Petitioner, he found a knife and a screwdriver in Petitioner's pocket (T. 189). Ms. Franklin testified that when she checked her window, the screen was pulled up and the screen sliced (T. 138).

Officer Cichatello also stated that once the dog alerted to Petitioner's presence under the trailer, Petitioner did not want to come out. Petitioner had to be coaxed out by the officers and the dog barking (T. 183). When he came out from under the trailer, Petitioner was sweating profusely and was extremely nervous (T. 186). When asked, Petitioner gave his name as Michael Wilson (T. 184-86), and gave a date of birth that did not match the professed age of 26 (T. 196). Later the officer found out, Petitioner's true name of Ronald Watson (T. 186).

Officer Christopher Redfern testified that during the process of booking Petitioner, the officer gave him three fingerprint cards to sign. Petitioner began to sign by writing an R, and then

corrected it to an M for Mike Wilson (T. 209). Petitioner did the same thing on the second card (T. 209). When asked about it, Petitioner did not respond (T. 209-210).

SUMMARY OF THE ARGUMENT

POINT I - This Court should adopt the position taken by the Fourth District in Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1999), rev. granted, No. 95, 663 (Fla. Dec. 3, 1999). In Salters, the District Court held that the defendant did not have standing to challenge Chapter 95-182 Laws of Florida as it had been replaced by Chapter 96-388 Laws of Florida. Thus that the window period closed on October 1, 1996, when Chapter 96-388 became effective. Petitioner's crime occurred on October 14, 1996, thus the State maintains that Petitioner herein had no standing to challenge the sentencing, or reap the benefits of this Court's decision in Thompson.

Alternatively, this Court should find that the significant amendments to the Gort Act by Chapter 96-388 makes the issue of the window period for the Gort Act irrelevant. For career criminal sentencing for all offenses committed after October 1, 1996, is controlled by Chapter 96-388 Laws of Florida.

POINT II - This Court should decline jurisdiction to review this second issue as raised by Petitioner since no jurisdictional basis to review same has been argued by Petitioner.

On the merits, the State maintains the District Court's affirmance should be approved and adopted. A motion for judgment

of acquittal must fully set forth the grounds upon which it is based. The "bare bones" motions made below did not allow Petitioner to raise every possible claimed insufficiency in the evidence on appeal. Under the motions made at trial, Petitioner failed to raise the argument before the trial court that he tried to make on appeal, thus the issue was not properly preserved for review.

Further, a review of the **facts** in Owen and contrasted to the **facts** presented at Petitioner's trial demonstrates that the two cases are distinguishable, and that in the case *sub judice* the State presented sufficient evidence to allow the trial court to submit the case to the jury. Thus Petitioner having failed to establish reversible error, the decision of the District Court affirming the trial court's denial of the motion for judgment of acquittal must be approved.

ARGUMENT

PETITIONER'S CRIME FELL OUTSIDE THE "WINDOW" PERIOD DURING WHICH THE VIOLENT CAREER CRIMINAL STATUTE WAS IN VIOLATION OF THE "SINGLE SUBJECT" RULE OF THE FLORIDA CONSTITUTION.

The opinion on review in the instant case reads as follows:

> Recently, the supreme court held that Chapter 95-182 was "unconstitutional as violative of the single subject rule contained in article III, section 6 of the Florida Constitution." State v. Thompson, No. 92,831 (Fla. Dec. 22, 1999).
>
> This court has held that only those persons who committed their criminal offenses on or after October 1, 1995 and before October 1, 1996, had standing to challenge Chapter 95-182 on single subject rule grounds. See Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1999), rev. granted, No. 95,663 (Fla. Dec. 3, 1999). According to the second district, the window period for the bringing of a single subject rule challenge closed on May 24, 1997, and not on October 1, 1996. The supreme court declined to rule on the standing issue in Thompson.
>
> Since appellant committed the burglary on October 14, 1996, he does not have standing to challenge Chapter 95-182 on single subject rule grounds. **On the standing issue, we certify conflict** with Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).
>
> On the remaining issue, **we find no error in the trial court's denial of the motion for judgment of acquittal.**

(Emphasis added.) Watson v. State, 25 Fla. L. Weekly D216 (Fla. 4th DCA Jan. 19, 2000).

It is clear therefore that the District Court acknowledged

that this Court in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999) held that Chapter 95-182, Laws of Florida, was "unconstitutional as violative of the single subject rule contained in article III, section 6 of the Florida Constitution." And that the only remaining issue is "the standing issue" which this Court declined to rule in Thompson.

In Salters v. State, 731 So. 2d 826 (Fla. 4th 1999), rev. granted, No. 95,663 (Fla. Dec. 3, 1999), the District Court held that the defendant did not have standing to challenge Chapter 95-182 Laws of Florida as it had been replaced by Chapter 96-388 Laws of Florida. Thus that the window period closed on October 1, 1996, when Chapter 96-388 became effective. Petitioner's crime occurred on October 14, 1996, thus the State maintains that Petitioner had no standing to challenge the sentencing for the following reasons.

Standing

Only a defendant who committed his offense within the period of unconstitutionality has standing to challenge the constitutionality of the Gort Act. Because the single subject provision applies only to chapter laws; Florida Statutes are not required to conform to the provision. State v. Combs, 388 So.2d 1029 (Fla. 1980). Once reenacted, a chapter law is no longer subject to challenge on the grounds that it violates the single

subject provision of Article III, § 6, of the Florida Constitution. State v. Johnson, 616 So.2d 1, 2 (Fla. 1993). The reenactment of a statute cures any infirmity or defect. State v. Carswell, 557 So.2d 183, 184 (Fla. 3d DCA 1990); Honchell v. State, 257 So.2d 889 (Fla. 1972); Alterman Transport Lines, Inc. v. State, 405 So.2d 456 (Fla. 1st DCA 1981). Thus, with single subject issues an important question is whether the incident being prosecuted arose prior to the constitutional problem being cured by reenactment.

Merits

In chapter 95-182, the legislature made significant changes to the habitual offender statute and created a category of offenders called violent career criminals This provision was codified into § 775.084 Fla. Stat. (1995) and was referred to as the "Gort Act". In Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), the district court held the chapter law violated the single subject provision. It also stated that the "window" period for defendants to challenge chapter 95-182, LAWS OF FLORIDA, on the basis that it violates the single subject provision of the Florida Constitution began on the effective date of the law, October 1, 1995, and ended on May 24, 1997. Thompson v. State, 708 So.2d 315, n.1 (Fla. 2d DCA 1998). On this later date, the Gort Act was reenacted as part of the Florida Statutes biennial reenactment. See Chapter 97-97,

Laws of Florida. The state acknowledges that if no intervening action had occurred, Thompson would be correct and this biennial reenactment would end the window period. State v. Johnson, 616 so.2d 1 (Fla. 1993)

In Salters v. State, 731 So. 2d 826, the Fourth District Court of Appeal held that the window period closed on October 1, 1996, when chapter 96-388 *Laws of Florida* became effective. It held that in chapter 96-388, the Florida legislature readdressed the provisions of the habitual offender statutes and that this repassage of the provisions of the violent career criminal section (the Gort Act) without the arguably civil provisions identified in Thompson cured the single subject problem found in Chapter 95-182 Laws of Florida.

The position of the Fourth District is supported by both case law and logic. In Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991), this Court found a single subject violation occurred when the legislature combined workers compensation legislation with international trade legislation. In determining the effective dates, this Court held that the problem was cured by the legislature in a special session reenacting the legislation in a manner which separated these two distinct concepts. Id. at 1169 Thus, this Court has recognized that the biennial reenactment of

the statutes is not the only way to close the window. The state asserts that what happened in this case is analogous to what transpired in Scanlan. In the 1996 legislative session, the legislature reenacted the career criminal portions of chapter 95-182 without including the objectionable civil damage provisions. Applying Scanlan, the legislative action should be held to have cured the problem. Therefore, the state maintains that this Court should follow the decision of the Fourth District and hold the window period ended on October 1, 1996.

Approving this cure would be an appropriate resolution of the problems presented by this single subject violation. This Court has long held that the purpose of the single subject provision is to prevent logrolling. Martinez v. Scanlan, 582 So.2d 1167, 1172 (Fla. 1991); State v. Lee, 356 So.2d 276, 282 (Fla. 1978) The evil that the single subject provision protects against is the attaching of unrelated legislation onto popular measures, thereby, bootstrapping the passage of the unrelated legislation upon the popularity of the primary legislation. Advisory Opinion to the Atty. Gen. re Fish and Wildlife Conservation Com'n, 705 So.2d 1351, 1353 (Fla. 1998)

When a statutory section created in this manner is ratified by subsequent legislative reenactment, any prior “logrolling” has been

mooted.

It is also appropriate to hold that the subsequent modification and readoption cures a single subject problem because of other Constitutional requirements placed on the passage of legislative bills. Article III Section 6 Fla. Const. requires when a bill is passed which amends a law in existence, that the sections being amended must be set out in full. Additionally, the enacting clause of the legislation must state, Be it enacted. By complying with the constitutional requirements, the legislature reenacts the statutory provision when it makes modifications. In this case, the legislature reenacted the provisions of the Gort Act by passage of chapter 96-388 Laws of Florida. Thus, the state maintains that the date of October 1, 1996, closes the window period for the purposes of a single subject challenge to the “Gort Act” provisions found in chapter 95-182 Laws of Florida

The other reason that the problem is cured by subsequent legislative is obvious. A criminal defendant must be sentenced in accordance with the law in effect when he committed the crime. When a statutory section is modified, a defendant is not prosecuted or sentenced under the original statute, but, under the version in effect at the time of the commission of the crime. Thus for those individuals who committed their crimes after October 1, 1996, the

governing law is Chapter 96-388 Laws of Florida. As to them, Chapter 95-182 Laws of Florida and its manner of passage is irrelevant.

CONSTITUTIONALITY OF CHAPTER 96-388

In light of the Fourth District's "window period" Petitioner goes on to attack the constitutionality of Chapter 96-388, thus the State will respond as follows:

The crux of Petitioner's argument is that the issue regarding the window period of Chapter 96-388 is moot because Chapter 96-388 also violates the single subject provision of Article III, Section 6. The State disagrees and contends that Chapter 96-388 does not violate the single subject provision, and therefore, is not unconstitutional.

The single subject provision, Article III, Section 6 of the Florida Constitution provides:

> "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

The single subject requirement of Article III, Section 6 of the Florida Constitution simply requires that there be "a logical or natural connection" between the various portions of the legislative enactment. State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993) (approving the lower court's pronouncement in Johnson v. State,

589 So. 2d 1370 (Fla. 1st DCA 1991)). The single subject requirement is satisfied if a "reasonable explanation exists as to why the legislature chose to join the two subjects within the same legislative act...." Id. at 4. Similarly, this Court has spoken of the need for a "cogent relationship" between the various sections of the enactment. Bunnell v. State, 453 SO. 2d 808, 809 (Fla. 1984). "The act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection." Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991).

Also, the purpose of Article III, Section 6 is the prohibition against a plurality of subjects in a single legislative act is to prevent "logrolling", Martinez v. Scanlan, 582 So.2d 1167, 1172 (Fla. 1991); State v. Lee, 356 So.2d 276, 282 (Fla. 1978). Logrolling is a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1339 (Fla. 1994).

While logrolling is improper, an act may be as broad as the legislature chooses, provided the matters included in the act have a natural or logical connection. Chenoweth v. Kemp, 396 So.2d 1122

(Fla. 1981); Board of Pub. Instruction v. Doran, 224 So.2d 693, 699 (Fla. 1969). Broad and comprehensive legislative enactments do not violate the single subject provision. *See* Smith v. Department of Ins., 507 So.2d 1080 (Fla. 1987). The test to determine whether legislation meets the single subject provision is based on common sense. Smith, 507 So.2d at 1087.

The Florida Supreme Court has accorded great deference to the legislature in the single subject area and the Court has held that the legislature has wide latitude in the enactment of acts. State v. Lee, 356 So.2d 276 (Fla. 1978); State v. Leavins, 599 So.2d 1326, 1334 (Fla. 1st DCA 1992). Examples abound where this Court has held that Acts covering a broad range of topics do not violate the single subject provision. The single subject provision is not violated when an Act provides for the decriminalization of traffic infractions and also creates a criminal penalty for willful refusal to sign a traffic citation, State v. McDonald, 357 So.2d 405 (Fla. 1978); the provision is not violated where an Act covers both automobile insurance and tort law, State v. Lee, 356 So.2d 276 (Fla.1978); nor is the provision violated where an Act covers a broad range of topics dealing with medical malpractice and insurance because tort litigation and insurance reform have a natural or logical connection, Chenoweth v. Kemp, 396 So.2d 1122

(Fla. 1981), Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987); nor is the provision violated where an Act establishes a tax on services and includes an allocation scheme for the use of the tax revenues. In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987). Finally, this Court has found that an act which deals with (1) comprehensive criminal regulations, (2) money laundering, and (3) safe neighborhoods is valid since each of these areas bears a logical relationship to the single subject of controlling crime. Burch v. State, 558 So.2d 1 (Fla. 1990).

The State contends that this natural, logical relationship exists in the instant case. Initially, the State reiterates that 1996 Fla. Laws ch. 388, § 44, states in pertinent part:

> Effective October 1, 1996, paragraphs (a)(b) and (c) of subsections (1), and subsections (2), (3), and (4) of section 775.084, Florida Statues are amended and subsection (6) of said section is reenacted . . . .

96 Fla. Laws ch. 388 § 44, which was approved by the Governor on May 31, 1996, omitted sections 8-10. Sections 8-10 were the sections of Ch. 95-182 which dealt with offensive civil domestic violence sanctions. As such, enactment of ch. 388 effectively severed the civil sanctions provided for in 95-182. As the offending civil provisions were severed from the act, the act is

clearly constitutional.

Petitioner does not adequately address the argument set out above, but makes a general statement that ch. 96-388 violates the single subject provision, regardless of the changes to section 775.084, concerning violent career criminals. Petitioner's argument is in error.

There are seventy-four sections of Chapter 96-388. A careful reading of the provisions of Chapter 96-388, Laws of Florida, compels the conclusion that the requisite natural or logical connection between the various sections exists. Chapter 96-388 is titled "An act relating to public safety." Chapter 96-388, Laws of Florida. All portions of the statute concern ways in which to increase public safety across the state. All portions of the statute share a common goal, a common purpose: "protection of the public."

1. Section One establishes an eight-year revision cycle for the criminal code. The effect of the act in this regard is clearly criminal in nature.

2. Section Two sets forth the policy for public safety. The goals enumerated in this plan include: a) the protection of the public by preventing, discouraging, and punishing criminal behavior; b) lowering the recidivism rate; c) maintenance of safe

and secure prisons; d) combatment of organized crime; etc. the act The a new category of offender for sentencing purposes, *i.e.*, the violent career criminal. Section two also created aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and the newly created list of qualifying offenses for violent career criminals. Sections three through seven then deal with the sentencing of, legislative findings regarding, enforcement policies concerning and prohibitions against the possession of firearms of the new created classification of violent career criminals. Section eight amended the husband and wife statute providing for restitution for the misdemeanor offense of violating an domestic violence injunction. Section nine amended the negligence statute providing for a private cause of action for domestic violence. Section ten amended the assault and battery statute, providing for clerk's duties; that only a law enforcement officer may serve an domestic violence injunction; requiring the reporting of the injunction to law enforcement agencies and restoring criminal contempt for a violation of an domestic violence injunction.

It is clear therefore that the legislature's reenactment of the "Gort Act" in Chapter 96-388 cured the single subject problem. Thus, this Court should adopt the position taken by the Fourth

District in Salters, and rule that for career criminal sentencing for all offenses committed after October 1, 1996, is controlled by Chapter 96-388 Laws of Florida, making the issue of the window period for the Gort Act irrelevant.

POINT II

THIS COURT SHOULD DECLINE TO REVIEW AN ISSUE DECIDED BY THE DISTRICT COURT WITHOUT OPINION. ALTERNATIVELY THE DISTRICT COURT'S DECISION AFFIRMING THE TRIAL COURT'S DENIAL OF THE MOTION FOR JUDGMENT OF ACQUITTAL SHOULD BE AFFIRMED AS THE STATE PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH THAT PETITIONER WAS THE BURGLAR.

Jurisdiction

This Court should decline to consider this point. In Savoie v. State, 422 So. 2d 308, 310 (Fla. 1982), this Court stated that it may, in its discretion, consider other issues "properly raised and argued before this Court." (Emphasis added.) A review of the opinion issued by the District Court in the case at bar clearly shows that the District Court certified conflict **only** as to the issue argued by the parties as issue I above.

The State acknowledges that under Savoie this Court has discretionary authority to consider other issues than those upon which jurisdiction is based. The State, however, points out that the District Court below specifically found "no error in the trial court's denial of the motion for judgment of acquittal." Watson, 25 Fla. L. Weekly D216. As this Court has maintained, with the 1980 amendment to the Florida Constitution, the Florida district courts of appeal are the courts of last resort, Jenkins v. State,

385 So. 2d 1356 (Fla. 1980). Therefore, since the opinion in the case at bar is a per curiam affirmance, without opinion, as to issue II, under Jenkins this Court does not have jurisdiction to review this particular issue.

In the alternative, since resolution of the certified conflict issue (sentencing) does not affect the disposition of the instant issue (judgment of acquittal), this Court should decline to address this second issue. See Stephens v. State, 572 So.2d 1387 (Fla. 1991) and State v. Gibson, 585 So.2d 285 (Fla. 1991)(Court declined to address other issues raised by the parties which lay beyond the scope of the certified question); Burks v. State, 613 So.2d 441, 446 fn.6 (Fla. 1993) ("We decline to address the other issues raised in the appeal because they are unnecessary to the resolution of the certified question"); State v. Hodges, 616 So.2d 994 (Fla. 1993) (The Court declined to address the second certified question in which claimant made a new argument for the first time on the grounds that it would require resolution of extensive factual matters, citing, Trushin v. State, 425 So.2d 1126 (Fla. 1982).)

Merits

Relying on the similarities between the facts of this case and the facts in Owen v. State, 432 So. 2d 579 (Fla. 2d DCA 1983), Petitioner claims the trial court erred in denying his motion for

judgment of acquittal, and that the District Court erred in affirming without discussing the issue. The State disagrees.

First, a motion for judgment of acquittal must fully set forth the grounds upon which it is based. Fla. R. Crim. P. 3.380(b). The "bare bones" motions made before the trial court (T. 225) does not allow Petitioner to raise every possible claimed insufficiency in the evidence on appeal. Hardwick v. State, 630 So. 2d 1212, 1213 (Fla. 5th DCA 1994). Under the motions made by Petitioner at trial, Petitioner failed to raise the argument he tried to make on appeal, thus the issue was not preserved for review. Johnson v. State, 478 So. 2d 885, 886 (Fla. 3d DCA 1985), dismissed, 488 So. 2d 830 (Fla. 1986).

Second, a review of the **facts** in Owen and contrasted to the **facts** presented at Petitioner's trial demonstrates that the two cases are distinguishable, and that in the case *sub judice* the State presented sufficient evidence to allow the trial court to submit the case to the jury. Thus Petitioner has failed to establish reversible error.

In Owen, the victim left the assailant inside her residence and went to the neighbor's house, two houses away, for help. Thus, at that time the victim lost sight of the assailant. There was at least a two minute lapse of time before the neighbor's son and

friend reached the victim’s residence yard and saw Owen coming from the side of the house. Thus, under those facts, it can be surmised that the assailant got away, and Mr. Owen just happened to be in the area.

The State submits that the facts in the case at bar are sufficient to support the conviction. Here Mrs. Franklin testified that when she saw the man from the waist up in her room through the window, she yelled, "who is it? and catch him." (T. 136). Ms. Franklin's nephew, Gail Henderson, testified that as soon as he heard his aunt say "who is this. Who is this. You all get that nigger, you all get him." he and Ms. Franklin's son immediately ran out of the door after the assailant (T. 156, 157).

Ms. Franklin testified that there is a wall behind the window to her room, so to leave you cannot go any other way except to go around the back to the front (T. 145). Ms. Franklin testified her apartment is walled-in (T. 147), so the assailant had to go to his left to leave the scene (T. 151). Ms. Franklin saw the assailant run (T. 151), and saw her son and nephew run in the same direction (T. 153).

Mr. Henderson testified that as he heard his aunt scream, he ran out of the apartment (T. 157), so as soon as he came out of the apartment, when he got to the end of the gate, that's when he saw

someone coming from behind the back of the apartment running towards the street (T. 157). Mr. Henderson and Ms. Franklin's son ran after the man for two to three minutes, and chased him into the trailer park (T. 157-8).

Thus, in the case at bar, unlike in Owen, there is no gap between the time Ms. Franklin lost sight of the assailant and her nephew picked up the chase when Petitioner ran out the **only** way from the window. So unlike in Owen, here Petitioner was seen coming out from the area through the only way out. The State submits the cases are factually distinguishable, thus Owen does not control. Each case has to be decided on its own facts.

As conceded by Petitioner, this was a circumstantial evidence case. When the state relies on circumstantial evidence, the circumstances, **when taken together**, must be of a conclusive nature and tendency, leading on the whole to a reasonable and moral certainty that the accused and no one else committed the offense charged. Owen v. State, 432 So. 2d at 581. Here when **all the circumstances are taken together**, it is clear that the State presented sufficient evidence to withstand the motion for judgment of acquittal.

In addition to the fact that Mr. Henderson picked up Petitioner immediately while Ms. Franklin yelled when she saw

Petitioner halfway inside her house through the window, you also have evidence of flight, his possession of the knife, and his lying about his name and date of birth. Evidence of flight remains to this day relevant evidence to the question of the defendant's guilt. State v. St. Jean, 658 So. 2d 1056, 1058 (Fla. 5th DCA 1995). In Spinkellink v. State, 313 So. 2d 666, 670 (Fla. 1975), cert. denied, 428 U.S. 911 (1976), the Court stated that "when a suspect endeavors to evade prosecution by flight, such fact may be shown in evidence as **one of the circumstances** from which guilt may be inferred."

Mr. Henderson and Ms. Franklin's son ran after the man for two to three minutes, and chased him into the trailer park, where they lost him (T. 157-8). Mr. Henderson was able to see the person's built, and clothes he was wearing (T. 159-160), and gave the police a description (T. 159). Mr. Henderson was positive, the person he chased from his aunt's apartment was the person found under the trailer by the police (T. 160-1, 172).

Road Patrol Officer Cichatello testified that Mr. Henderson and Mr. Pendergrass gave him a detailed description of the clothing the suspect was wearing (T. 181), including the color of the shirt (T. 198); and described the person as a short black male (T. 191), between the ages of 28 and 35 (T. 198). The person under the

trailer matched the description given by the witnesses (T. 184). The person was Petitioner (T. 183), and the witnesses identified Petitioner as the person they chased from Ms. Franklin's apartment (T. 184).

When Officer Cichatello searched Petitioner, he found a knife and a screwdriver in Petitioner's pocket (T. 189). Ms. Franklin testified that when she checked her window, the screen was pulled up and the screen sliced (T. 138).

Officer Cichatello also stated that once the dog alerted to Petitioner's presence under the trailer, Petitioner did not want to come out. Petitioner had to be coaxed out by the officers and the dog barking (T. 183). When he came out from under the trailer, Petitioner was sweating profusely and was extremely nervous (T. 186). When asked, Petitioner gave his name as Michael Wilson (T. 184-86), and gave a date of birth that did not match the professed age of 26 (T. 196). Later the officer found out, Petitioner's true name of Ronald Watson (T. 186).

Officer Christopher Redfern testified that during the process of booking Petitioner, the officer gave him three fingerprint cards to sign. Petitioner began to sign by writing an R, and then corrected it to an M for Mike Wilson (T. 209). Petitioner did the same thing on the second card (T. 209). When asked about it,

Petitioner did not respond (T. 209-210).

That Petitioner ran into the trailer, that he hid under a trailer, and did not want to come out, and had to be coaxed out, that he gave a different name than his own, and a different date of birth, is all relevant evidence from which evidence of guilt may be inferred. State v. St. Jean, 658 So. 2d 1056; Shellito v. State, 701 So. 2d 837, 840-841 (Fla. 1997).

Further, the evidence also showed that the screen to the window had been pulled up, and the screen sliced. Thus, Petitioner's possession of the knife and screwdriver was additional circumstantial evidence that proved Petitioner's guilt.

For these reasons, the State maintains that the facts herein are distinguishable from the facts in Owen, and that under the particular circumstances at bar, the trial court was correct in denying Petitioner's motion for judgment of acquittal. Thus, the District Court's affirmance of the denial must be approved.

CONCLUSION

WHEREFORE, based on the above and foregoing arguments and authorities cited therein, the State of Florida respectfully urges the Court to resolve the standing issue conflict by adopting the window period suggested by the Fourth District in Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1999), and otherwise **APPROVE** the decision of the district court issued in the case at bar affirming the judgment and sentence imposed by the trial court below.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

_____

CELIA TERENZIO
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

_____

GEORGINA JIMENEZ-OROSA
Assistant Attorney General
Florida Bar No. 441510
1655 Palm Beach Lakes Boulevard
Suite 300
West Palm Beach, FL 33401-2299
(561) 688-7759

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Courier to: PAUL E. PETILLO, Assistant Public Defender, Criminal Justice Building/6th Floor, 421 Third Street, West Palm Beach, FL 33401, this 20th day of April, 2000.

_____
Of Counsel