

IN THE SUPREME COURT OF FLORIDA

RONALD WATSON,)
)
 Petitioner)
)
 vs.) CASE NO. SC00-404
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

POINT I

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

This issue has been decided adversely to the state. See Salters v. State, 25 Fla. L. Weekly S365 (Fla. May 11, 2000). Accordingly, this Court should reverse petitioner's violent career criminal sentence and remand for resentencing in accordance with the valid laws in effect on October 14, 1996, the date of petitioner's offense.

POINT II

THE FOURTH DISTRICT COURT OF APPEAL
INCORRECTLY HELD THAT THE EVIDENCE WAS
SUFFICIENT TO ESTABLISH THAT PETITIONER
WAS THE BURGLAR

Respondent argues that this issue was not preserved for appellate review because defense counsel allegedly made a "bare bones" motion for judgment of acquittal. Respondent's Brief at p. 22. This argument is without merit because defense counsel made a quite specific motion for judgment of acquittal (T 225). Listing the evidence in the case, defense counsel argued that the state did not establish that petitioner was was the burglar (T 225). That is the same argument being made on appeal.

Respondent argues that Owen v. State, 432 So. 2d 579 (Fla. 2d DCA 1983) is distinguishable because "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 Appellant ran out the **only** way from the window." Respondent's Brief at p. 23. Respondent implies that there was a continuous sighting of the intruder by someone. However, that was not the case. Here, Ms. Franklin saw an intruder (T 136). Ms. Franklin yelled to her son and nephew that there was someone in her room and to "catch that nigger" (T 138). Maurice and

Damian ran out the front door of the apartment (T 139, 146). Ms. Franklin testified that Maurice and Damian started to chase someone, but she did not see who they were chasing, and she could not say whether the person they were chasing was the person she had seen in her bedroom (T 152). Maurice identified petitioner as the person he and Damian chased into the trailer park where petitioner was found hiding (T 160-161). No doubt this evidence shows petitioner was a prowler, but it does not show that he was the intruder. The real intruder may have waited behind the apartment until Ms. Franklin, Maurice, and Damian were out of sight (chasing petitioner) and then slipped away. For example, no one testified that petitioner was the only person behind the apartment building (as Maurice testified, it was "pitch black" back there). It's true that petitioner was the only person seen running from behind the apartment building, but that just creates a "strong suspicion" that petitioner was the intruder, which is clearly insufficient to sustain a criminal conviction. Terzado v. State, 232 So.2d 232 (Fla. 4th DCA 1970), Owen, supra. There is no material distinction between Owen and the instant case. This Court should reverse with directions to discharge petitioner as to count I.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court to quash the decision of the Fourth District and to remand this cause with proper directions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Georgina Jimenez-Orosa, Assistant Attorney General, 1655 Palm Beach Lakes Blvd., Suite 300, West Palm Beach, Florida 33401, by courier this _____ day of May, 2000.

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