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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

JONATHAN CYRIL KNIGHT,

Appellant,

vs. CASE NO. SC13-564

STATE OF FLORIDA,

Appellee.
_______________________________/

APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENTS

Appellant was the Defendant and Appellee was the Prosecution in the Felony Division of the Circuit Court, Ninth Judicial Circuit, in and for Orange County, Florida. In the Brief, the appellee will be referred to as "the State" and the appellant will be referred to as he appears before this Court.

In the brief the following symbols will be used:

"R" - Refers to the Record on Appeal.

"TT" - Refers to the transcript for Trial held on June 22, 2011.

"Supp" - Refers to the record volume titled Supplemental Record 1 which contains the transcript for the Sentencing Hearing held on June 24, 2011.

STATEMENT OF THE CASE

Jonathan Knight, Appellant, was charged by an Information in the Circuit Court of Orange County, Florida, with Possession of Cannabis With Intent to Sell or Deliver and Possession of More Than 20 Grams of Cannabis. (R 8-9).

A jury trial on the charges was held on June 22, 2011. At the close of the State's case, trial counsel moved for a judgment of acquittal arguing the case was strictly circumstantial as to constructive possession. (TT 57-58). Trial counsel argued a reasonable hypothesis of innocence: the backseat passenger placed the drugs in the suitcase during the period of time after Knight was asked out of the car and police were otherwise occupied. (TT 60). The trial court denied the motion, finding it was an issue for the jury to decide. (TT 62).

The jury returned a verdict of not guilty as to possession of cannabis with intent to sell or deliver, but guilty as charged as to possession of more than 20 grams of cannabis. (R 40-41; TT 124-125). Knight was adjudicated guilty and sentenced to 6 months community control followed by 24 months drug offender probation. (Supp 101).

A Notice of Appeal was timely filed. (R 85). On appeal, Knight argued the trial court erred in denying his motion for judgment of acquittal. *Knight v. State*, 107 So. 3d 449, 451 (Fla. 5th DCA 2013). "Knight focuse[d] on the knowledge

element, arguing that because Chad Harris had unsupervised access to the luggage after Deputy Murphy removed Knight from the car, Harris could have slipped the marijuana into the luggage without Knight's knowledge shortly before the vehicle search." *Id.* at 453-454.

The Fifth District Court of Appeal affirmed Knight's conviction while recognizing it was in conflict with *Evans v. State*, 32 So. 3d 188 (Fla. 1st DCA 2010); *P.M.M. v. State*, 884 So. 2d 418 (Fla. 2d DCA 2004); *N.K.W., Jr. v. State*, 788 So. 2d 1036 (Fla. 2d DCA 2001); *E.H.A. v. State*, 760 So. 2d 1117 (Fla. 4th DCA 2000); *S.B. v. State*, 657 So. 2d 1252 (Fla. 2d DCA 1995); and *Cook v. State*, 571 So. 2d 530 (Fla. 1st DCA 1990). *Knight*, 107 So. 3d at 451. The Fifth District disagreed with the way those other District Courts applied the circumstantial evidence standard of review. *Id.* The court acknowledged it would have reversed Knight's conviction had it applied the standard in the fashion the courts did in the above cases. *Id.* at 454.

The Fifth District further called into question the continued use of the circumstantial evidence standard of review describing it as misleading, confusing, and unnecessary. *Id.* at 455-462. The Fifth District argued the standard should not be applied when "the state presents direct evidence to support a finding of guilt as to most elements, but is left to rely on circumstantial evidence to prove the

defendant's state of mind." *Id.* at 463. The court included the knowledge element of constructive possession as a state of mind element. *Id.*

STATEMENT OF THE FACTS

Knight and a group of friends traveled to Orlando on the weekend of November 21, 2010, for the Florida Classic[1]. (TT 69, 76). The group also planned on going to a car show that weekend. (TT 80). Knight had approximately $2,400 in his pocket. (TT 29, 79). The money was to cover the expenses of the trip which included hotels and going to some strip clubs. (TT 80).

Knight, Chaka Miller, and Chad Harris were driving down I-drive on the early morning of November 21 when Deputy Murphy stopped them for excessively loud music being played from the car. (TT 20-21, 76). The three were in Miller's car. (TT 69, 74). Knight was driving with Miller in the front passenger seat and Harris in the back seat. (TT 35, 70, 78). Knight immediately pulled into a 7-Eleven parking lot upon seeing Murphy's lights activated. (TT 33, 77). Murphy approached the car, asked for Knight's license and the registration, and had him step out of the car. (TT 21, 72, 78). Harris and Miller stayed in the car. (TT 35, 72, 78).

Knight and Murphy walked to an area between Miller's car and Murphy's patrol car. (TT 34, 78). Murphy eventually gave Knight a citation for the

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[1]Football game between Florida A&M and Bethune Cookman Universities. (TT 21).

violation and told him he was free to leave. (TT 21, 78). Knight walked into the 7-Eleven and purchased a drink. (TT 78).

After the stop Deputy Robinson arrived on the scene with his K-9, Endo. (TT 22, 43, 72). Robinson arrived a couple of minutes after Murphy had Knight step out of the car. (TT 34). Robinson walked Endo around Miller's car. (TT 22, 43). Endo alerted on the passenger door. (TT 43). Murphy had Harris and Miller step out of the car and searched it. (TT 23, 35-36, 44).

Murphy located a small suitcase in the back seat that had a name tag on it. (TT 23). The tag had Knight's name on it. (TT 23-24). Murphy located a bag containing 24.4 grams of cannabis in the suitcase. (TT 24-26, 50). The suitcase had no other paraphernalia in it and only contained clothing and toiletries. (TT 28, 39). Murphy arrested Knight even though Knight denied the cannabis was his. (TT 28, 79). Neither Miller nor Harris were searched. (TT 73).

Miller had not seen Knight with cannabis that night. (TT 72). He denied the cannabis found was his. (TT 75). Knight denied the suitcase and cannabis were his. (TT 76, 79, 81).

SUMMARY OF ARGUMENT

The special standard of review that applies in circumstantial evidence cases is not confusing or misleading and should be retained. Its simplistic approach allows the trial court, and any appellate court, to properly analyze the facts to establish if the State has sufficient evidence to reach the jury.

The special standard of review should apply in all cases in which any individual element is established solely from circumstantial evidence. Accepting the Fifth District's theory on when it should be applied would render the special standard moot as it would only be applied in the most extreme of circumstances.

Applying the special standard, as it should be applied, Knight's conviction cannot stand. He presented a reasonable hypothesis of innocence that Chad Harris placed the marijuana in the suitcase after Knight exited the car. The State proceeded to trial on a constructive possession theory. Knowledge of the presence of the marijuana had to be independently proven due to Knight being one of three occupants of the car. The evidence presented in trial did not exclude Knight's reasonable hypothesis of innocence.

ARGUMENT

THE SPECIAL STANDARD OF REVIEW IN CIRCUMSTANTIAL EVIDENCE CASES SHOULD BE RETAINED AND SHOULD BE APPLIED IN ANY CASE IN WHICH ANY ELEMENT IS PROVEN BY WHOLLY CIRCUMSTANTIAL EVIDENCE.

The Fifth District Court of Appeal in Knight v. State, 107 So. 3d 449 (Fla. 5th DCA 2013), affirmed Knight's conviction holding it was not a wholly circumstantial evidence case due to at least one element being proven by direct evidence. The Fifth District recognized its decision was in conflict with the decisions of *Evans v. State*, 32 So. 3d 188 (Fla. 1st DCA 2010); *P.M.M. v. State*, 884 So. 2d 418 (Fla. 2d DCA 2004); *N.K.W., Jr. v. State*, 788 So. 2d 1036 (Fla. 2d DCA 2001); *E.H.A. v. State*, 760 So. 2d 1117 (Fla. 4th DCA 2000); *S.B. v. State*, 657 So. 2d 1252 (Fla. 2d DCA 1995); and *Cook v. State*, 571 So. 2d 530 (Fla. 1st DCA 1990).

The Fifth District also called into question, and asked this Court to reconsider the continued use of, the special standard of review applied to circumstantial evidence cases. This Court should reject the Fifth District's attempt to abolish a long standing legal principle of this State and specifically hold that standard applies to any case in which any element is proven by wholly

circumstantial evidence.

A) The "special standard" should be retained.

For the 60 years since the Supreme Court of the United States decided *Holland v. United States*, 348 U.S. 121 (1954), Florida courts have applied what the Fifth District Court of Appeal termed "the special standard of review" in circumstantial evidence cases where the defense has raised a hypothesis of innocence. *See Jaramillo v. State,* 457 So. 2d 257 (1982), and cases cited therein. The decision of the Fifth District has invited this Court to change that standard, because it is misleading and so complicated and confusing that appellate decisions have applied it inconsistently. It would have Florida follow *Holland.*

The standard now in use is neither misleading nor complicated. It requires three simple questions be answered:

(1) Is the hypothesis reasonable?

(2) If so, did the State offer sufficient competent evidence inconsistent with it? *State v. Law,* 559 So. 2d 187, 188 (Fla. 1989) ("A motion for judgment of acquittal should be granted in a circumstantial evidence case if the state fails to present evidence from which the jury can exclude every reasonable hypothesis except that of guilt.") (citations omitted).

(3) If so, is the evidence then available to the jury sufficient to support the charge? *Beasley v. State,* 774 So. 2d 649, 659 (Fla. 2000) ("Having determined that the record contains competent, substantial evidence which is inconsistent with Beasley's theory of innocence as

> argued at trial, the Court must next determine whether there is competent, substantial evidence to support the jury's verdict.").

By deciding whether a hypothesis is reasonable, a trial court is usurping neither the jury's function nor the jury's power to decide the case. It decides only whether it must go on to the second step. Of course if it decides that the hypothesis is not reasonable, it proceeds directly to Step 3.

If the court finds the hypothesis reasonable, it simply asks if the State has adduced competent and substantial evidence inconsistent with the hypothesis. In other words, did the State "present evidence from which the jury could exclude every reasonable hypothesis except that of guilt." *Reynolds v. State*, 934 So. 2d 1128, 1146 (Fla. 2006) (citing *Darling v. State*, 808 So. 2d 155-156 (Fla. 2006). This Court reiterated this point recently stating "[i]t s the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict." *Dausch v. State*, 39 Fla. L. Weekly S415, S417 (Fla. June 12, 2014) (quoting *Ballard v. State,* 923 So.2d 475, 485 (Fla.2006) (quoting *Davis v. State,* 90 So. 2d 629, 631-32 (Fla. 1956))).

The jury only gets the case if the State's evidence sufficiently excludes the defendant's theory and supports every element of the offense. It then is for the jurors to determine whether the State's evidence excluded every reasonable doubt,

including doubts raised by any hypotheses counsel may argue to them.

Appellate courts review trial court's decisions on judgment of acquittals to ensure the trial court properly followed the three step process and made the correct decisions at each step. This review process simply asks the reviewing court to ensure the trial court performed its gatekeeping function.

The Fifth District expressed concern that the "special standard" removes the credibility determinations of the jury. It confuses a jury's credibility determination with sufficiency of the evidence. The special standard does not question the credibility of the evidence, only the sufficiency. In a circumstantial evidence case, the State has one additional evidentiary requirement, excluding the defendant's reasonable hypothesis. Just as in a direct evidence case, the case goes to the jury if the State presents sufficient evidence.

The special standard does not ignore the correlation between the strength of the State's evidence and the reasonableness of the hypothesis. Strong evidence by the State can aid in excluding the hypothesis presented. Furthermore, the State can present additional evidence during its rebuttal that goes directly to the hypothesis that it may not otherwise introduce. Surely, any prepared prosecutor will be able to anticipate the defendant's hypothesis.

Most importantly, the special standard plays a vital role in ensuring that innocent defendants do not get convicted on insufficient evidence. Juries are instructed a reasonable doubt can come from the evidence, lack of evidence, or conflict in evidence. Fla. Std. Jury Instr. (Crim.) 3.7. A hypothesis, while relying on evidence, is not evidence. Juries are further instructed that a reasonable doubt cannot be a speculative or imaginary doubt. *Id.* Thus, it is more than reasonable to believe a jury may wholly disregard a defense attorney's argument presenting the hypothesis, which is not evidence, as speculative.

Removing the special standard would render cases with circumstances susceptible of equally strong but irreconcilable inferences of guilt and innocence potentially producing verdicts of guilt. The Fourth District Court of Appeal explained:

> The ultimate question devolves here then as to whether a jury may be permitted to consider a single set of circumstances, which are at once susceptible of opposing reasonable hypotheses on the issue of guilt or innocence in a criminal case, and return a verdict of guilty based on their view of the more reasonable of the two. Clearly not, since it is the tendency to establish one fact to the exclusion of contrary facts which gives circumstantial evidence the force of proof in the first place; and when circumstances are reasonably susceptible of two conflicting inferences they are probative of neither. There simply would be no "proof."

Grover v. State, 581 So. 2d 1379, 1381 (Fla. 4th DCA 1991).

Recently, the Supreme Court of New Hampshire addressed the very concerns expressed by the District Court in *State v. Germain,* 79 A. 3rd 1025 (N.H. 2014).[2] The Supreme Court of New Hampshire maintained its similar "special standard" in circumstantial evidence cases, modifying it for clarity only, in the face of challenges from the state. *Id.* at 1033-1035.

The Supreme Court of the United State has said of itself "[t]he court's duty is to resist the strong temptation to relax rigid standards when it seems the only way to sustain convictions of evildoers." *Krulewitch v. United States,* 336 U.S. 440, 457 (1949). The Fifth District is asking this Court to relax its standard in circumstantial evidence cases under the guise of the standard being confusing, misleading, and unnecessary. Potentially innocent people will be housed in our State's prisons.

B)The "special standard" should be applied in any case in which any element is proven by wholly circumstantial evidence.

The primary reason the Fifth District gave for affirming Knight's conviction was that his case is not "wholly circumstantial." It ruled that this is so because the State used direct evidence to prove one or more elements of the

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[2]New Hampshire also has a jury instruction that is required to be read in all circumstantial evidence cases. *Germain,* 79 A. 3d at 1033-1034.

offense. The Fifth District's theory that the special standard should not be applied when at least one element is proven by direct evidence is erroneous.

Nearly thirty years ago, the Third District Court of Appeal listed situations in which cases are considered wholly circumstantial:

> In an unbroken line of decisions dating back nearly a century, Florida courts have consistently reversed criminal convictions, including larceny and theft convictions, based solely on circumstantial evidence when that evidence, although suspiciously pointing to the defendant's guilt, failed to exclude every reasonable hypothesis of innocence, due to one of the following factors: (1) certain deficiencies or gaps in the state's case which did not sufficiently link the defendant to the crime charged, *did not sufficiently establish a requisite criminal intent or guilty knowledge*, or otherwise left intact a viable hypothesis of innocence, (2) certain affirmative proofs of innocence, frequently the defendant's own trial testimony or statements to the police, which were not sufficiently negated by the state's evidence, or (3) a combination of both of the above factors.

Jones v. State, 466 So. 2d 301, 320-23 (Fla. 3d DCA 1985) (emphasis added). The Third District listed 70 cases in footnotes in which courts found a case was wholly circumstantial based upon only one element being proven by circumstantial evidence. *Id.* at 320-322 Fns. 37-39. Notably, New Hampshire applies its special standard whenever any element is proven by circumstantial evidence. *Germain,* 79 A. 3rd at 357.

Very few cases would be considered a wholly circumstantial case applying the Fifth District's theory. Every homicide, except where the body has not been found, has direct proof of the first element, the victim being dead. A robbery committed by a masked defendant linked via DNA only would not be a circumstantial case because direct evidence established a robbery occurred. The leading circumstantial evidence cases of this Court, *Jaramillo*, *Law*, and *Darling,* would have had to be affirmed if this Court applied the Fifth District's theory of a wholly circumstantial case. Mr. Dausch would still be sitting on death row had this Court not utilized the special standard in *Dausch.*

The Fifth District's theory of what constitutes a wholly circumstantial case runs counter to common sense. Common sense dictates a case is wholly circumstantial when the conviction cannot be had without one element being proved by circumstantial evidence. Thus, this Court should explicitly state the special standard applies in any case in which any element is proven solely by circumstantial evidence.

C) This case.

Knight was convicted of constructively possessing marijuana. The law on constructive possession is well settled:

> To establish constructive possession, the state must show that the accused had dominion and control over the contraband, knew the contraband was within his presence, and knew of the illicit nature of the contraband. *Wale v. State*, 397 So. 2d 738 (Fla. 4th DCA 1981). If the premises where contraband is found is in joint, rather than exclusive, possession of a defendant, however, knowledge of the contraband's presence and the ability to control it will not be inferred from the ownership but must be established by independent proof. *Wale*; *Frank v. State*, 199 So.2d 117 (Fla. 1st DCA 1967).

Brown v. State, 428 So. 2d 250, 252 (Fla. 1983). In the instant case, three people occupied the vehicle in which the suitcase, which contained the marijuana, was found. Therefore, the knowledge of the presence of the contraband cannot be inferred and the State was required to prove it with independent proof.

There was no direct evidence that Knight knew the drugs were in the suitcase. There was no confession and Chaka Miller testified he had not seen Knight with marijuana on him that night. The State relied solely on the name tag on the suitcase to establish Knight's knowledge. Thus, this is a wholly circumstantial case.

Knight presented a hypothesis of innocence that Chad Harris placed the marijuana in the bag unbeknownst to him. That hypothesis is reasonable considering the circumstances of the case. The State did nothing to exclude the

hypothesis.

The State did not ask either deputy if they observed any movement in the vehicle after removing Knight. The Fifth District pointed out that Miller never testified whether he saw Harris put the marijuana in the suitcase. However, neither side asked him that. That failure falls upon the State as it was their burden to exclude the hypothesis. The State did not call Harris as a witness to deny he placed the marijuana in the suitcase. Thus, the State failed to rebut the reasonable hypothesis presented by Knight. *See e.g., Atkins v. State*, 301 So. 2d 459 (Fla. 4th DCA 1974) (holding the State failed to exclude the reasonable hypothesis of innocence that one of the other passengers placed the bag on the ground beneath the car after Atkins exited the car).

The Fifth District admitted, in certifying the conflict, "[w]ere we to apply this standard here in the same fashion as [*N.K.W.*, *Cook*, *Evans*, *P.M.M.*, *E.H.A.*, and *S.B.*], we would also reverse the conviction." *Knight*, 107 So. 3d at 454. Hence, the Fifth District conceded this case mandates reversal if this Court finds a wholly circumstantial evidence case is one in which any element is established based only on circumstantial evidence. Therefore, Knight's conviction and sentence must be vacated.

Mr. Knight's is only one case. But in a nation where criminal jurisprudence navigates by the polestar of Lord Blackstone's famous maxim, "Better that ten guilty persons escape than that one innocent suffer,"[3] preserving processes which honor that maxim will enable this and all Florida Courts to stay on the course which follows that star.

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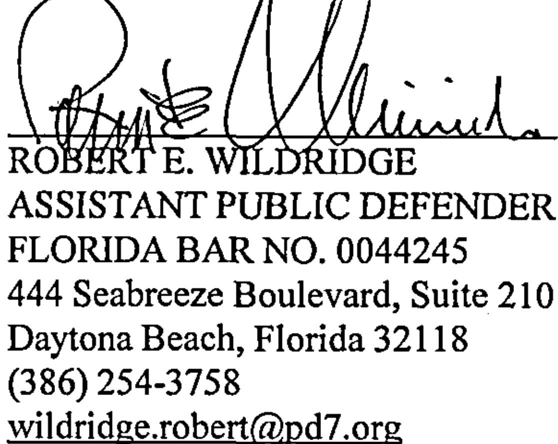
[3] *See* Volokh, *n* Guilty Men, 146 University of Pennsylvania Law Review 173 (1997).

CONCLUSION

BASED UPON the foregoing cases, authorities and policies, the undersigned counsel respectfully asks this Court to reverse the decision of the Fifth District Court of Appeal in this cause, and remand the matter to the Circuit Court in and for Orange County with direction that it discharge Mr. Knight from the offense charged.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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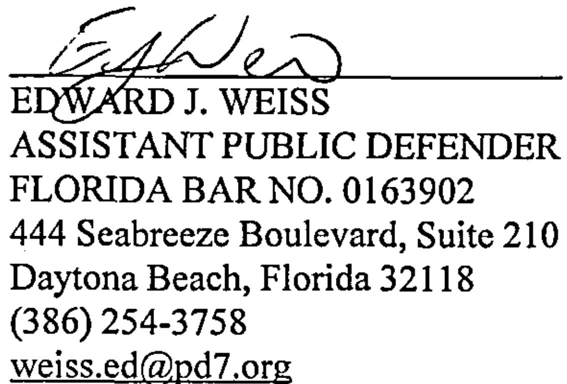

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CERTIFICATE OF FONT

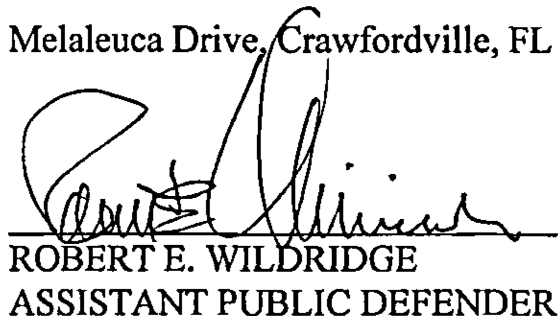
I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

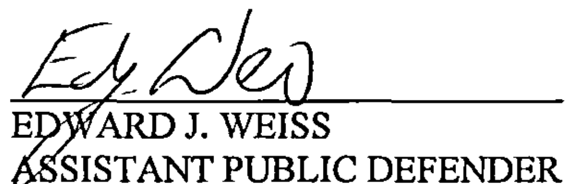
DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purposes of service of all documents, pursuant to Rule 2.516, Florida Rules of Judicial Administration, in this proceeding: appellate.efile@pd7.org (primary), wildridge.robert@pd7.org (secondary) and weiss.ed@pd7.org (tertiary).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtaccess.com; electronically delivered to the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com; and mailed to Mr. Jonathan C. Knight, #146365, Wakulla Correctional Institution Annex, 110 Melaleuca Drive, Crawfordville, FL 32327-4963, this 21st day of August, 2014.





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