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IN THE SUPREME COURT OF FLORIDA

JONATHON KNIGHT,

Petitioner,

v. CASE NO. SC13-564

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF FACTS

The State submits the following additions to the Petitioner's Statement of Facts:

After the Defendant was arrested, he was searched. (T. 28). There was a large quantity of cash – approximately $2400 – in his front left pocket. (T. 29).

Deputy Robinson, the K-9 officer, happened to be in the same area as the traffic stop, and he arrived at the scene within a couple minutes. (T. 33-34).

In his trial testimony, the Defendant specifically denied that the luggage was his, and specifically testified that he did not place any cannabis in any luggage he had. (T. 79, 81).

In closing argument, defense counsel contended that Chad Harris could have placed the cannabis in the suitcase. (T. 104-09). The jury rejected this argument, finding the Defendant guilty of possession. (T. 124-25).

On appeal, the Fifth District Court of Appeal affirmed the Defendant's conviction, but noted that it did so based on its determination that the special circumstantial evidence standard of appellate review – requiring the court to analyze whether the evidence was inconsistent with a reasonable hypothesis of innocence – did not apply here. Knight v.

State, 107 So. 3d 449, 454-55 (Fla. 5th DCA 2013). The court further noted that applying this standard here "would improperly invade the province of the jury," which should have the final say regarding whether the Defendant's hypothesis of innocence was "reasonable." Id. at 455.

Specifically, the court found that the jurors should be free to decide whether Chad Harris' potential access to the suitcase during the short time after the Defendant left the car and before the passengers were removed from the car gave them a reasonable doubt regarding whether the Defendant knew the cannabis was in the suitcase. Id. at 468. In so holding, the court noted that several factors weighed against the Defendant's story, including the short window of opportunity for Harris to place the cannabis in the suitcase, the fact that Chakra Miller was in a position to see him do this, yet did not testify that Harris did so, and the jury's "unique ability to assess Knight's demeanor on the witness stand during the whole of his testimony." Id.

The district court also conducted an extensive analysis of the development of the unique "reasonable hypothesis of innocence" standard of review in circumstantial evidence cases, concluding that this standard should not apply in the

instant case and that this Court should reconsider the law in this area altogether. Id. at 455-62.

In reaching this conclusion, the court noted that the application of this special standard of review was based on an old distrust of circumstantial evidence – a distrust that has since been repudiated by modern courts. Id. at 455-56. Juries are no longer instructed to view circumstantial evidence under a different lens, calling into question the logic of appellate courts doing so. Id. at 456-57.

The court further concluded that the illogic of this position has led to confusion and conflicting decisions in Florida courts, including in its analysis various hypotheticals illustrating the pointlessness of this standard. Id. at 457-62.

SUMMARY OF ARGUMENT

The district court's opinion rejecting the special standard of review in circumstantial evidence cases is well-reasoned and should be adopted by this Court. Using a special standard in these cases is based on the long-discredited notion of a difference in reliability between direct and circumstantial evidence. Such a notion was rejected by this Court when it stopped requiring juries to be informed of this artificial difference, and it only makes sense to apply that same reasoning on review of convictions. This Court should overrule the confusing precedent requiring a different standard of review in circumstantial cases, as the federal courts and the vast majority of state courts have already done.

At the very least, this Court should clarify that the circumstantial evidence standard does not apply unless the case is *wholly* circumstantial, and that it does not apply to the intent element of crimes. As this very case illustrates, any other ruling eviscerates this Court's long-standing deference to the jury as fact-finder, and leads to inconsistent results. Applying the same standard of review in all cases makes more sense and eliminates artificial distinctions that have no place in the appellate system.

ARGUMENT

THE SAME STANDARD OF REVIEW SHOULD BE APPLIED IN ALL CASES ON APPEAL, AND THE CONFUSING "REASONABLE HYPOTHESIS OF INNOCENCE" TEST SHOULD BE DISCARDED BY THIS COURT.

The lower court's opinion is well-reasoned and legally sound, explaining in detail the confusion caused by Florida precedent requiring appellate courts to apply a different standard of review in circumstantial evidence cases. This Court should reverse that precedent and instead adopt the simple and consistent reasonable doubt standard already used by juries in Florida, by the vast majority of other states, and by the federal courts.

Stare Decisis

First, the State acknowledges the fundamental principle that stare decisis "provides stability to the law and to the society governed by that law." State v. Gray, 654 So. 2d 552, 554 (Fla. 1995). This does not mean, however, that courts are forever bound by earlier cases, no matter how mistaken those cases may be.

As this Court has expressly recognized, "[p]erpetrating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the court." Id. (internal citations and quotes omitted). Accordingly, stare decisis will yield "when an

established rule has proven unacceptable or unworkable in practice." Tiara Condominium Ass'n, Inc. v. Marsh & McLennan Companies, Inc., 110 So. 3d 399, 407 (Fla. 2013).

Applying that standard here, Florida precedent requiring a different analysis on appeal based on whether the evidence at trial is categorized as direct or circumstantial should be overruled by this Court.

Circumstantial Evidence

Sixty years ago, the United States Supreme Court explicitly recognized that circumstantial evidence is no different than direct evidence and requires no greater burden of proof:

> Circumstantial evidence in this respect is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 140 (1954).

In making this observation, the Court rejected the defendant's argument that the jury should have been given a special instruction on the burden of proof in circumstantial evidence cases, noting that such an instruction would be

"confusing and incorrect." Id. See also Desert Palace, Inc. v. Costa, 539 U.S. 90, 100 (2003) (noting that treating circumstantial and direct evidence the same "is both clear and deep rooted," and that "[c]ircumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence").

This Court ultimately agreed with the Supreme Court, following the federal courts and other state courts in eliminating the special jury instruction on circumstantial evidence. In so holding, this Court reasoned that such an instruction was unnecessary in light of the instructions on reasonable doubt and the burden of proof. In re Use by Trial Courts of Standard Jury Instructions in Criminal Cases, 431 So. 2d 594, 595 (Fla. 1981).[1]

Florida juries, then, have long evaluated criminal cases using a simple standard that straightforwardly explains the burden of proof in such cases – did the State present sufficient evidence to prove each element of the charged crime beyond a reasonable doubt. This same standard is applied

[1]Since then, this Court has consistently rejected arguments that the failure to give a special instruction on circumstantial evidence was an abuse of discretion. Gosciminski v. State, 132 So. 3d 678, 708 n.19 (Fla. 2013), cert. denied, 2014 WL 1621680 (Oct. 6, 2014).

whether the evidence is entirely direct, entirely circumstantial, or a combination of each.

Once a conviction is in place and the case is pursued on appeal, however, an entirely different analysis is applied. In those cases where the evidence is categorized as circumstantial, the appellate court is not left with the simple question of whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found proof beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 324 (1979); Lynch v. State, 293 So. 2d 44, 45 (Fla. 1974). Instead, the appellate court is left to discern on a cold record what the defendant's "hypothesis of innocence" was, whether that hypothesis was reasonable, and whether there was sufficient evidence to contradict that particular theory of events. See State v. Law, 559 So. 2d 187, 188-89 (Fla. 1989).

While the Defendant contends that the "reasonable hypothesis of innocence" test is simple and easy to apply, the opinion of the court below well-illustrates the fallacy of that claim. First, the standard is often articulated in various ways – sometimes requiring the State to affirmatively eliminate *all* inferences except that of guilt (a near impossible burden), sometimes requiring the State to

contradict the specific defense theory; sometimes requiring a review of the reasonableness of the hypothesis of innocence, sometimes stating that whether the evidence fails to exclude all reasonable hypotheses is for the jury to determine. See Knight, 107 So. 3d at 468-69. The lack of consistency stems from the confusing nature of this review.

Second, this supposedly simple standard of review in fact gives no guidance as to when the appellate court must accept the hypothesis of innocence as a matter of law, when the hypothesis can be rejected as unreasonable, or when the decision should be left to the jury. As the court below explained, as applied to the facts of the instant case, the answers to these questions are far from clear, and only get more muddy as the facts are slightly changed:

> Here, for example, the circumstantial evidence is inconsistent with Knight's general claim that he had no knowledge of the presence of the drugs, but not with his more specific theory that Harris could have placed the drugs in his suitcase without his knowledge. The same would be true if there had been no passengers in the car and Knight had theorized that a friend or roommate who did not make the trip could have slipped the drugs into his suitcase shortly before he loaded the car, unknown to him, thereby using him as an unwitting courier to get the drugs to someone who Knight was meeting in Orlando. Similarly, there would be no evidence to directly contradict a hypothesis that the K-9 officer planted the drugs during the search, without Knight's knowledge, or, for that matter, that aliens were somehow involved. Given these four increasingly unlikely scenarios, all with no piece of evidence

> offered at trial to directly contradict the hypothesis of innocence, the "standard" . . . provides no guidance.

Knight, 107 So. 3d at 468 n.16.

The State submits that each of the above hypotheticals would be evaluated differently by different panels of judges on appeal, leading to different results. See Id. at 458; Dunn v. State, 454 So. 2d 641, 644 (Fla. 5th DCA 1984) (Cowart, J., concurring) (listing dozens of conflicting opinions coming to different "reasonable hypothesis of innocence" conclusions).

In short, this convoluted "reasonable hypothesis of innocence" test is difficult to apply, leads to conflicting results in similar cases, and has no logical basis. As Judge Torpy succinctly stated below, "[t]he sufficiency of the verdict should be based on the probative force of the evidence, not its legal category. . . . I have always been perplexed that an appellate 'standard of review' evolved from a repudiated jury instruction." Knight, 107 So. 3d at 469 (Torpy, J., concurring). The "reasonable hypothesis of innocence" standard should be discarded by this Court, as other jurisdictions have already done.

Other Jurisdictions

The majority of other jurisdictions have already rejected the notion that a circumstantial evidence case should be

reviewed in a different manner than a direct evidence case. The reasoning of these cases is persuasive, and should be followed here.

The United States Supreme Court expressly rejected the notion of a special standard of review for circumstantial evidence in its 1979 decision in Jackson, 443 U.S. at 326. Relying on Holland's determination that there is no qualitative difference between circumstantial and direct evidence, the Court stated that the reasonable doubt standard adopted in its opinion fully preserved the due process protection of the Constitution while properly deferring to the trier of fact. Id.

The federal courts quickly followed this standard, unanimously recognizing that a jury is free to choose among reasonable constructions of the evidence, and no special standard of review is necessary in circumstantial evidence cases. See United States v. Bell, 678 F.2d 547, 549 n.3 (5th Cir. 1982) (collecting cases), aff'd, 462 U.S. 356 (1983).

The majority of state courts have adopted this position as well, rejecting a special standard for circumstantial evidence cases. See, e.g., Easlick v. State, 90 P.3d 556, 557 n.1 (Okla. Crim. App. 2004) (collecting cases); Geesa v. State, 820 S.W.2d 154, 161 n.9 (Tex. Crim. App. 1991)

(collecting cases), overruled on other grounds, Paulson v. State, 28 S.W.3d 570 (Tex. Crim. App. 2000). In so holding, these courts have adopted the reasoning set out in detail in the opinion below.

In Easlick, for example, the court noted that the "reasonable hypothesis" test was created at a time "when circumstantial evidence was universally distrusted," which is no longer the case in modern jurisprudence. 90 P.3d at 558. Once courts reject the "antiquated notion" that direct evidence is more valuable than circumstantial evidence, a uniform standard should be adopted to reduce confusion and underscore the belief that there is no categorical difference in the weight to be given to these two types of evidence. Id. at 559.

Similarly, the Vermont Supreme Court recognized that the focus should be on evidentiary sufficiency, a task "ill served by reliance upon the discredited suspicion of circumstantial evidence." State v. Derouchie, 440 A.2d 146, 150 (Vt. 1981). As the Supreme Court of Ohio explained:

> In every criminal case, the jury is asked to weigh all of the admissible evidence, both circumstantial and direct, to determine if the defendant is guilty beyond a reasonable doubt. Hence, there is but one standard of proof in a criminal case, and that is proof of guilt beyond a reasonable doubt. This tenet of the criminal law remains true, whether the

> evidence against a defendant is circumstantial or direct.

State v. Jenks, 574 N.E.2d 492, 503 (Ohio 1991) (footnote omitted), superceded by statute on other grounds as recognized in State v. Smith, 684 N.E.2d 668, 684 (Ohio 1997). That same standard applies on appeal. Id.

The rejection of a special jury instruction in circumstantial evidence cases led the Texas Court of Criminal Appeals to reject a special standard of review in such cases as well. See Geesa, 820 S.W.2d at 155-61. The court reasoned that the sufficiency of the evidence has to be measured according to the jury instructions:

> Given the fact that a jury is to be guided by the charge in reaching their verdict, and given the fact that juries are no longer instructed on the law of circumstantial evidence, it no longer makes sense for appellate courts to use the circumstantial evidence "construct" to review the jury's verdict and to determine, thereby, whether the jurors acted "rationally". **To do so evaluates the jurors' rationality by a different standard than that by which they were instructed to reach their verdict.**

Id. at 159 (emphasis added).

Indeed, focusing on a test never presented to the jury places the appellate court in a position of considering on a cold record matters never actually considered by the fact-finder, essentially placing the appellate court in the position of an additional juror – which "effectively

repudiates the jury's prerogative to weigh the evidence, to judge the credibility of the witnesses, and to choose between conflicting theories of the case." Id.

Admittedly, a few states do still apply the "reasonable hypothesis of innocence" test, including New Hampshire. In a case relied on by the Defendant, the New Hampshire Supreme Court recently expressed its continuing approval of this standard. State v. Germain, 79 A.3d 1025 (N.H. 2013). A review of this case illustrates the convoluted reasoning supporting such approval.

Not only did the court decide that applying this standard of review made sense only if the jury was instructed on the same standard as well, its attempt to better define that standard led it to create a five paragraph jury instruction that can generously be described as complicated, and perhaps more accurately described as baffling. Specifically, the adopted instruction provides as follows:

> There are two types of evidence—direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony of a witness based upon personal knowledge—that is, what the witness actually saw, heard or otherwise directly experienced. Circumstantial evidence is indirect evidence which tends to prove a disputed fact by proof of other facts. Let me give you a brief example to demonstrate the difference between direct and circumstantial evidence. [Insert example.]

That is all there is to circumstantial evidence. On the basis of reason and common sense you infer from an established fact the existence or non-existence of another fact.

You should consider both types of evidence. There is no legal distinction between the weight of direct evidence as compared to circumstantial evidence. You are permitted to give equal weight to both, but you must decide how much weight to give any evidence, whether it be direct or circumstantial. However, there is a rule relating to circumstantial evidence that you must keep in mind. If the State presents only circumstantial evidence to prove one or more elements of the charged offense, then in order to convict, you must find that the totality of the evidence excludes all reasonable conclusions other than guilt. This means that if it is reasonable to arrive at two conclusions, one consistent with guilt and one consistent with innocence, then you must choose the reasonable conclusion consistent with innocence. In determining whether all reasonable conclusions other than guilt have been excluded, you should not consider any item of circumstantial evidence in isolation. Rather, you should consider each item of circumstantial evidence in the context of all the other evidence.

You must understand, however, that this circumstantial evidence rule does not apply to direct evidence. Therefore, if there is a conflict between witnesses who offer direct evidence concerning certain facts, you must decide which witness to believe. For example, suppose there are two eye witnesses to a crime, and one testifies that the defendant committed the crime and the other testifies that the defendant did not commit the crime. This presents a situation where there is a conflict in the direct evidence. In this situation, you, the jury, must decide which witness to believe, and whether—based upon all of the evidence—the State has proven the defendant's guilt beyond a reasonable doubt.

> In summary, you should consider all the evidence in the case and decide whether the State has proven the defendant guilty beyond a reasonable doubt.

Id. at 1033-34. Applying such a standard, at trial or on appeal, is anything but simple.

The better-reasoned, more logical cases have eliminated the special standard of review in circumstantial cases, for the reasons discussed above. This Court should reach the same conclusion here.

Florida Cases

Florida law already applies the same principles discussed above by those courts rejecting the special standard of review. Specifically, this Court has already recognized that the jury instructions on reasonable doubt and the burden of proof have rendered unnecessary any special instruction on circumstantial evidence. In re Standard Jury Instructions, 431 So. 2d at 595. As the district court pointed out in its opinion below, applying a different standard on appeal than that applied by the actual fact-finder in the trial court makes no sense. Knight, 107 So. 3d at 457.

This Court has also recognized that applying a different rule to certain kinds of evidence is inherently problematic. See Marr v. State,, 494 So.2d 1139, 1140-41 (Fla. 1986) (rejecting proposed instruction that required jury to "rigidly

scrutinize" testimony of sexual battery victim). Treating circumstantial evidence differently than direct evidence raises the same concerns. Viewing circumstantial evidence with a modicum of suspicion lends unsubstantiated weight to certain evidence (such as eyewitness identification – now suspected as a leading cause of wrongful convictions) merely because the law has categorized such evidence as "direct" rather than circumstantial. See State v. Sims, 110 So. 3d 113, 123-24 (Fla. 1st DCA 2013) (Thomas, J., dissenting).

Finally, this Court has expressly stated that an appellate court cannot second guess the jury's decision on the credibility and weight to be given to certain evidence. See Tibbs v. State, 397 So. 2d 1120 (Fla. 1981), aff'd, 457 U.S. 31 (1982). An appellate court may concern itself only with the sufficiency of the evidence, rather than its weight:

> As a general proposition, an appellate court should not retry a case or reweigh conflicting evidence submitted to a jury or other trier of fact. Rather, the concern on appeal must be whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and judgment. Legal sufficiency alone, as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal.

Id. (footnotes omitted). Questions of weight are left for resolution "only before the trier of fact," and "no appellate

court should reverse a conviction or judgment on the ground that the weight of the evidence is tenuous or insubstantial." Id. at 1125.

By requiring the appellate court to discern the reasonableness of a defendant's hypothesis of innocence, however, this Court has unintentionally placed the appellate court in the position of fact-finder and credibility judge. As the court below explained:

> Taking this case as an example, the jury was in the unique position to evaluate the credibility of the witness who appears to have been called to help lay the foundation for Knight's argued hypothesis of innocence by testifying that Chad Harris was in the backseat with the suitcase after Knight was removed from the vehicle. The jury may have noticed — and factored into its overall evaluation of the evidence — that this witness was also in a position to know whether or not Harris had placed the drugs into Knight's suitcase, but avoided that topic altogether. Although no one would question the jury's right to judge the credibility of this witness, or to take this determination into account when reaching its ultimate verdict, the special standard would treat this and other credibility determinations as irrelevant for purposes of review in a circumstantial evidence case.

Knight, 107 So. 3d at 459.

In short, the special standard of review in circumstantial evidence cases often requires an appellate court to base its decision, on a cold record, on evidence that the jury rejected as lacking credibility. See Id. at 469 (Torpy, J., concurring) ("The anomalous effect of a reversal

here would be tantamount to a judicial acceptance of Appellant's impeached testimony, as a matter of law, *even though the jury rejected it as a matter of fact*.") (emphasis added).

In light of this case law, then, the stage has been set for this Court to revisit the special standard of review in circumstantial evidence cases. The court below has engaged in a rigorous analysis of this issue and come to the well-reasoned conclusion that it is time for Florida to join the majority of other jurisdictions and apply a single standard of review that recognizes the fact-finders' ability to evaluate the evidence as they see fit -- an evaluation that will not be subjected to second-guessing, using an entirely different standard, on appeal.

Petitioner's concern that the adoption of a uniform standard in all criminal cases will somehow lead to a plethora of wrongful convictions is unfounded. No such floodgate was opened in the federal system or in other state courts that have long rejected a special standard of review. In addition, Florida has an additional safeguard against such wrongful convictions – the trial judge's role as the "seventh juror" allowing a new trial if the verdict is against the weight of the evidence. See Tibbs, 397 So. 2d at 1125. The reasonable

doubt standard fully protects a defendant's due process rights, and adding an additional, confusing analysis on top of this standard serves only to muddle the situation.

Judges on other courts have already agreed with the panel's decision below, calling this opinion "compelling" and "insightful." See Westbrooks v. State, 145 So.3d 874, 881 (Fla. 2d DCA 2014) (Morris, J., concurring); Rocker v. State, 122 So. 3d 898, 912 (Fla. 2d DCA 2013) (Villanti, J., dissenting); Sims, 110 So. 3d at 117 (Thomas, J., dissenting). This Court should adopt the lower court's opinion as the law in Florida.

"Wholly" Circumstantial Cases

Even if this Court is not willing to eliminate the different standard of review in circumstantial evidence cases, it should at the very least clarify that this standard applies only when the evidence is "wholly circumstantial," as it originally held. See Jaramillo v. State, 417 So. 2d 257 (Fla. 1982) (mandating the use of the special standard of review "where a conviction is *wholly* based on circumstantial evidence") (emphasis added). See also Mosley v. State, 46 So. 3d 510, 526 (Fla. 2009) (where the trial included "both direct and circumstantial evidence, courts do not apply the special

standard of review applicable to circumstantial evidence cases"), cert. denied, 131 S.Ct. 219 (2010).

As the district court explained, the circumstances under which the special standard applies has become confused, with many cases reiterating that it applies only when *all* the evidence is circumstantial, while other cases apply the standard when the evidence on any single *element* is circumstantial. See Knight, 107 So. 3d at 462-67; Green v. State, 90 So. 3d 835, 838 (Fla. 2d DCA 2012) (Altenbernd, J., concurring). This is especially confusing where, as here, the element at issue is the Defendant's state of mind, such as knowledge, intent, or premeditation – elements that are almost always subject to proof *only* through circumstantial evidence. Knight, 107 So. 3d at 463-67.

Applying the basic "reasonable doubt" standard, the jury is always free to find the State's witnesses credible and the defendant to be lying regarding his intent. Id. at 463. This is not the case, however, applying the special circumstantial evidence standard on appeal – rendering this standard completely unworkable in this situation:

> The unique problem in this type of case is that a person can always claim to have had a different state of mind than his or her actions suggest. And, when you remove the role of the fact-finder (in the courtroom) and view the explanation solely as a

> logic exercise on a cold appellate record, the explanation will almost always appear plausible. This is true because we know that thoughts are not always clear-cut or rational. As such, it would be a reasonable hypothesis that almost anyone at almost any time could have a state of mind different than the state of mind which a rational fact-finder would attribute to the person based upon observed facts. For this reason, a standard that does not allow a conviction based upon circumstantial evidence of a defendant's state of mind, "no matter how strongly the evidence may suggest" the required state of mind, is unworkable and is obviously contrary to the law.

Id. at 464 (footnote omitted).

The application of this "reasonable hypothesis" standard to state of mind also stands in direct contrast to the numerous cases explicitly stating that a trial court should almost never grant a motion for judgment of acquittal based on mental intent, as that element is uniquely a question for the jury. Id. at 464-66 (collecting cases). See also Rocker, 122 So. 3d at 910-12 (Villanti, J., dissenting) (illustrating how the application of circumstantial evidence review of defendant's intent led to majority second-guessing jury's decision).

Conclusion

The law has changed significantly since the early cases viewed circumstantial evidence as untrustworthy and jurors as incapable of evaluating testimony without specific rules for doing so. The lower court's opinion presents a compelling

case for revisiting the old standard of review in circumstantial cases, and for at the very least limiting that standard to wholly circumstantial cases, with proper deference to the fact-finder. This Court should take this opportunity to align itself with the federal courts, and the majority of state courts, that review a jury's verdict based on the sufficiency of the evidence, rather than its legal category.

The decision of the lower court should be affirmed, and its opinion should be adopted by this Court.

CONCLUSION

Based on the arguments and authorities presented herein, the State respectfully requests this honorable Court affirm the district court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Answer Brief On the Merits has been furnished to Robert E. Wildridge and Edward J. Weiss, counsel for Petitioner, 444 Seabreeze Blvd., Ste. 210, Daytona Beach, Florida 32118, by email to appellate.efile@pd7.org, wildridge.robert@pd7.org, and weiss.ed@pd7.org, this 10th day of October, 2014.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

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