

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

JANUARY TERM 2005

**STATE OF FLORIDA,**

***NOT FINAL UNTIL DISPOSITION OF ANY  
TIMELY FILED MOTION FOR REHEARING.***

Appellant,

v.

**ORBIE FULKS,**

Appellee.

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CASE NOS. 4D03-4783  
and 4D03-4994

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Opinion filed April 20, 2005

Consolidated appeals and cross-appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Lee Jay Seidman, Judge; L.T. Case No. 02-10813CFA.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for appellant.

Carey Haughwout, Public Defender, and Patrick B. Burke, Assistant Public Defender, West Palm Beach, for appellee.

PER CURIAM.

We affirm the downward departure sentence imposed pursuant to section 921.0026(2)(j), Florida Statutes (2002). On the cross-appeal, we find no error in the trial court's denial of a motion for judgment of acquittal on the burglary/battery charge. In the light most favorable to the state, the evidence supported the conclusion that Fulks had passed the "boiling point" by the time he entered his estranged wife's apartment. Based on the request for relief in Fulks's brief on the cross-appeal, we do not reach the other issues on the cross-appeal, and affirm.

WARNER, GROSS and MAY, JJ., concur.