

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-1314
DCA CASE NO. 3D07-2401

GREGORY THOMAS,

Petitioner,

-vs-

STATE OF FLORIDA

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE FACTS AND THE CASE

Respondent submits that the Statement of the Case and the Facts in Petitioner's brief is accurate, and Respondent adopts and incorporates the statement in this brief.

SUMMARY OF ARGUMENT

The instant case involves a fact pattern under which there is a taking of property from one victim and, during the course of Petitioner's flight from that taking, another person intervenes to prevent the successful completion of that one and only taking. During that intervention, Petitioner resorts to force and the use of that force is an effort to complete the original taking of property. None of the cases relied upon by Petitioner involve that factual situation. As such, none of the cases relied upon by Petitioner can establish express and direct conflict on the question whether the use of force, under such circumstances, relates back to the original taking, which has not yet been successfully completed.

ARGUMENT

THERE IS NO EXPRESS AND DIRECT CONFLICT WITH ANY DECISION OF THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL, AND THEREFORE, THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE.

Article V, section 3(b)(3) of Florida's constitution provides that this Court:

May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. (Emphasis added.)

“The only facts relevant to [this Court's] decision to accept or reject [petitions for review based on an alleged decisional conflict] are those facts contained within the four corners of the decisions allegedly in conflict.” Reaves v. State, 485 So.2d 829, n.3 (Fla. 1986). “[This Court is] not permitted to base [its] conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions.” Id. For there to be direct conflict, the majority opinions of the district courts must involve the same facts and decide the same legal issue. Ortiz v. State, 963 So.2d 226 (Fla. 2007)(discharging jurisdiction because “the alleged conflict decisions are factually distinguishable.”).

Here, Petitioner took property from the person of the Victim's mother and ran away. He therefore clearly intended to commit, and did commit, a robbery by sudden snatching. When the Victim ran after Petitioner in an attempt to retrieve the stolen property and stop the taking, Petitioner formed the separate intent to use

force against the Victim in order to complete the taking, and thus clearly intended to commit, and did commit, the separate offense of robbery against the Victim.

Petitioner contends he did not commit a robbery because the taking and the force were not exerted against the same person, i.e., he took property from the Victim's mother and used force against the Victim. However, as explained by the Third District, the version of the statute applicable to this case reads as follows:

(1) **“Robbery” means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.**

....

(3)(a) An act shall be deemed “in the course of committing the robbery” if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

(b) **An act shall be deemed “in the course of the taking” if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.**

§ 812.13, Fla. Stat. (2004) (emphasis added). Respondent notes that there is no requirement in the statute that the force and taking be exerted against the same person. Accordingly, the Third District determined that the offense of robbery is

committed when there is a taking of property from the person or custody of another, and force, violence, assault, or putting in fear is used in the course of the taking, regardless of whether the force, violence, assault, or putting in fear is exerted against the person from whom the property was taken or from another person, so long as it was exerted in the course of the taking.

The cases relied upon by Petitioner are not in express and direct conflict with the decision of the Third District. For there to be direct conflict, the majority opinions of the district courts must involve the same facts and decide the same legal issue. See Ortiz v. State, 963 So.2d 226 (Fla. 2007)(discharging jurisdiction because “the alleged conflict decisions are factually distinguishable.”).

In Robinson v. State, 692 So.2d 883 (Fla.1997), this Court accepted review of a certified conflict “on the issue of whether the snatching of property by no more force than is necessary to remove the property from a person who does not resist amounts to robbery in Florida.” Id. at 884. This Court held that in order for a snatching of property to amount to robbery, “the perpetrator must employ more than the force necessary to remove the property from the person. Rather there must be resistance by the victim that is overcome by the physical force of the offender.” Id. at 886. Respondent notes that the legislature abolished this requirement when it enacted section 812.131, Florida Statutes (1999), “Robbery by sudden snatching.”

To convict a defendant of that new crime, it is not necessary for the State to prove that the accused used more force than necessary to obtain the property or that the victim offered any resistance. Section 812.131 became effective on October 1, 1999. Ch. 99-175 § 3, at 974, Laws of Fla. In any event, Robinson does not involve the same facts nor decides the same legal issue as this case. Specifically, Robinson does not hold that the offense of robbery requires that the use of force and the taking must be exerted on the same victim. Indeed, Robinson does not even mention such a situation.

In Royal v. State, 490 So.2d 44 (Fla. 1986), this Court explained that the “question for resolution is whether the offense of robbery, as defined by section 812.13, Florida Statutes (**1983**), has occurred when, after completing a theft, the defendant employs “force, violence, assault, or putting in fear” while fleeing the premises from which the goods were taken.” (Emphasis added). As recognized by the Third District, prior to 1987, Florida law interpreted 812.13 as requiring that the force associated with a robbery must precede or be contemporaneous with the taking of property and Royal held accordingly. As this Court later noted in Robinson,

After Royal, the Florida Legislature amended section 812.13, Florida Statutes, to provide that robbery occurs if force or intimidation is used “prior to, or contemporaneous with, or subsequent to the taking of the

property and if [the force or intimidation] and the act of taking constitute a continuous series of acts or events.” Ch. 87-315, Laws of Fla. This amendment superseded Royal, which held that force must be used prior to or while the taking is in progress . . .

Robinson v. State, 692 So.2d at 886, fn. 9. Therefore, Royal did not decide the same legal issue as this case. Specifically, Royal does not hold that the offense of robbery requires that the use of force and the taking must be exerted on the same victim. Further, Royal was superseded by statute.

In Bell v. State, 394 So.2d 979 (Fla. 1981), this Court answered in the affirmative the following certified question of great public interest: “Whether specific intent (i. e., the intent to permanently deprive the owner of property) is still a requisite element of the crime of robbery as now defined by Section 812.13, Florida Statutes (1975).” Id. at 979, 980. Therefore, Bell did not decide the same legal issue as this case. Specifically, Bell does not hold that the offense of robbery requires that the use of force and the taking must be exerted on the same victim. Indeed, Bell does not even mention such a situation.

In Williams v. Mayo, 172 So. 86 (Fla. 1937), the petitioner in a habeas corpus proceeding contended “the information failed to charge any offence against the laws of this state because the word ‘rob,’ which appears in the statute, was entirely omitted therefrom.” Id. at 87. The information charged the petitioner with forcefully taking \$2,000 from a single victim, R.R. Montgomery. Indeed, there is

no mention whatsoever of any other victim. Accordingly, Williams did not decide the same legal issue as this case and is factually distinguishable from the instate case. Specifically, Williams does not hold that the offense of robbery requires that the use of force and the taking must be exerted on the same victim. In fact, Williams does not even mention such a situation.

In Brown v. State, 848 So.2d 361 (Fla. 4th DCA 2003), the defendant was charged with robbery but the trial court granted the defendant's motion for judgment of acquittal on the robbery charge and reduced the charge to robbery by sudden snatching. The state did not appeal the granting of defendant's motion for judgment of acquittal. The defendant appealed his conviction for robbery by sudden snatching and the Fourth District affirmed the conviction for robbery by sudden snatching and did not even consider the dismissal of the robbery charge. Therefore, Respondent respectfully submits that Petitioner's assertion that the Fourth District affirmed the judgment of acquittal on the robbery charge is incorrect. Indeed, the trial court granted the defendant's motion for judgment of acquittal on the robbery charge after the state rested and before the charge conference. Id. at 362-363. Accordingly, the state could not have appealed the trial court's order. See Hudson v. State, 711 So.2d 244, 246 (Fla. 1st DCA 1998) ("Read in the context of the double jeopardy provisions in [the state and federal

constitutions, section 924.07(1)(j), Florida Statutes] plainly contemplates [a state's] appeal from a judgment of acquittal only if the judgment of acquittal follows a guilty verdict."). The Fourth District held only that the jury was improperly instructed that it could convict the defendant when the property snatched was not actually taken from the person of the victim. Id. at 364. Therefore, Brown did not decide the same legal issue as this case. Specifically, Brown does not hold that the offense of robbery requires that the use of force and the taking must be exerted on the same victim.

In Rose v. State, 507 So.2d 630 (Fla. 5th DCA 1987), the defendant forced his way into a home and accosted a husband and wife. He was charged with the attempted armed robbery of the wife. At the close of the state's case at trial, the state conceded that it had failed to adduce evidence that supported this charge and moved to amend the information to allege an attempted armed robbery of the husband. The trial court granted the state's motion to amend and the defendant was convicted and appealed his conviction. The Court simply determined that the defendant had not been charged and had not been tried of the crime for which he was convicted and reversed. Therefore, Rose is a case that deals solely with the sufficiency of an information and sufficiency of proof the crime alleged in the information. It did not decide the same legal issue as this case and did not hold

that the offense of robbery requires that the use of force and the taking must be exerted on the same victim.

All of the remaining cases addressed in Petitioner's brief involve the question of the number of takings and simply recognize that a defendant cannot be convicted of two counts of robbery when the defendant does not intend to take property from two separate victims. See Lundy v. State, 614 So.2d 674 (Fla. 2d DCA 1993) (defendant could not be convicted of two counts of robbery because no evidence that the defendant intended to take property from two people); Hopps v. State, 594 So.2d 848 (Fla. 2d DCA 1992) (theft of a purse containing property of two victims is typically a single robbery and the defendant did not take anything from second victim); Anderson v. State, 639 So.2d 192 (Fla. 4th DCA 1994) (defendant could not be convicted of two counts of robbery when he took property from only one victim); Atwell v. State, 886 So.2d 421 (Fla. 2d DCA 2004) (where the defendant held four women at gunpoint but took property from only three of them, the conviction for the robbery of the victim from whom no property was taken could not stand).

Here, Petitioner clearly formed the intent to use force against the Victim in order to complete the taking of property from the Victim's mother. Accordingly, Petitioner clearly intended to commit two separate crimes, i.e., the snatching of the

purse from the Victim's mother, and the robbery by the use of force against the Victim. Further, Petitioner was NOT charged with or convicted of two counts of robbery; he was convicted of robbery by sudden snatching and felony murder with robbery as the predicate felony. These are two very different offenses. Therefore, the cases relied upon by Petitioner are inapposite and certainly not in conflict with the Third District's holding that a taking from one victim may be combined with the use of force on a second victim to constitute ONE robbery.

CONCLUSION

WHEREFORE, the State of Florida respectfully requests an Order of this Court declining to exercise its discretionary review jurisdiction in this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT was mailed this _____ day of _____, 2010, to Shannon P. McKenna, Esq., Assistant Public Defender, 1320 N.W. 14th Street, Miami, FL 33125.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is typed in compliance with the requirements set forth in Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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