

IN THE SUPREME COURT OF FLORIDA

CONNIE FAYE LINCOLN,)
)
 Defendant, Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Plaintiff, Respondent.)
 _____)

CASE NO. 64,816

FILED
SID J. WHITE
APR 3 1984
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

DISCRETIONARY REVIEW OF DECISION
OF FIFTH DISTRICT COURT OF APPEAL
BASED UPON CERTIFIED CONFLICT WITH
DECISIONS OF OTHER DISTRICT COURTS
OF APPEAL.

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LARRY B. HENDERSON
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OTHER AUTHORITIES:

Section 777.03, Florida Statutes

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ARGUMENT

WHETHER A DEFENDANT WHO IS
NOT PRESENT DURING A ROBBERY,
BUT WHO IMMEDIATELY THERE-
AFTER KNOWINGLY DRIVES THE
PERPETRATOR AWAY FROM THE
SCENE OF THE CRIME IN AN EFFORT
TO ELUDE PURSUING POLICE
OFFICERS, CAN BE CONVICTED OF
THE ROBBERY AS A PRINCIPAL?

The State, in its Answer Brief, is understandably trying to broaden the focus of the scrutiny of this Court. Petitioner respectfully submits and can well attest to the fact that the Fifth District Court of Appeal is acutely aware of the standard of review of a Motion For Judgment of Acquittal. The majority of the Court applied that test of whether a reasonable juror could conclude that the evidence, viewed in a light most favorable to the State, excluded every reasonable hypothesis of innocence. The Court held that, but for Petitioner driving her husband away from the scene of his crime in an effort to elude the police, the evidence was insufficient for a reasonable juror to conclude that every reasonable hypothesis had been excluded. Petitioner agrees.

The Court went further, however, and held that "driving a getaway car in an elusive manner in an attempt to avoid the police creates a prima facie case from which the finder of fact at trial may properly infer complicity in intent to commit the crime." Lincoln v. State, ___ So.2d ___ (Fla. 5th DCA 1983) [8 FLW 2861]. This further holding creates the express and direct conflict that was certified by the Fifth District Court of Appeal, in that said holding deviates from precedent established by the First and Third District Courts of Appeal.

Thus, it is of no avail for the State to ask this Court to

again rule upon the entire Motion For Judgment of Acquittal, in that the Fifth District Court of Appeal has already issued its finding in that regard:

As in [Gains v. State, 417 So.2d 719 (Fla. 1st DCA 1982)], there was no direct evidence in the instant case that Connie Lincoln had seen her husband carry a gun into the drug store; had heard him discuss his intention to commit the robbery; had been able to see the robbery in progress; or had acted as a look-out during the course of the robbery.

Lincoln, id.

The conflict that this Court is respectfully asked to resolve is the legal consequence of driving a car in an elusive manner in an attempt to avoid the police after a crime has been committed by someone else outside of the driver's perception. Is such conduct punishable pursuant to Section 777.03, Florida Statutes, as well as necessarily indicative of an intent to participate in the preceding conduct of another person? Does such conduct exclude every reasonable hypothesis of innocence? Petitioner respectfully submits that it does not.

The State argues, "Mrs. Lincoln could have left her husband after he went into the store. She did not. Instead she stayed and drove for some four miles in an attempt to elude the police. The jury could reasonably conclude ... that Petitioner was waiting in the vehicle to help her husband escape from the robbery with drugs and/or money to buy drugs." (Answer Brief at p.5). In reply, Petitioner maintains that since she had no knowledge of the impending robbery she had no reason to leave her husband. Petitioner's conduct was not inconsistent with a reasonable hypothesis of innocence, as determined by the Fifth District Court of Appeal, and accordingly

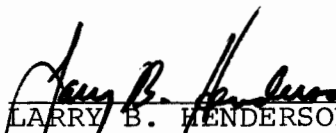
the conviction for robbery should be reversed.

CONCLUSION

BASED UPON the foregoing authorities and argument, Petitioner respectfully asks this Honorable Court to quash the opinion of the Fifth District Court of Appeal in the instant cause and to reverse Petitioner's conviction of robbery and remand for discharge of Petitioner.


Respectfully submitted,

JAMES B. GIBSON
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SEVENTH JUDICIAL CIRCUIT


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, 4th Floor, Daytona Beach, FL 32014 and Ms. Connie F. Lincoln, #100782, Annex Rt. 3, Stewart's Lane, Nashville, Tenn. 37218 this 2nd day of April, 1984.


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