

IN THE SUPREME COURT OF FLORIDA

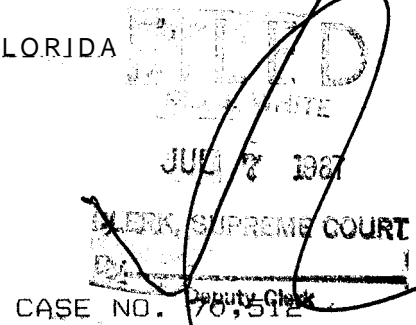
STATE OF FLORIDA,

Petitioner,

v.

VAUGHN R. SIMPSON,

Respondent.



RESPONDENT'S BRIEF ON THE MERITS

MICHAEL E. ALLEN  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

CARL S. MCGINNES  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR #230502  
POST OFFICE BOX 671  
TALLAHASSEE, FLORIDA 32302  
(904) 488-2458

ATTORNEY FOR RESPONDENT

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## II STATEMENT OF THE CASE AND FACTS

Respondent cannot accept petitioner's statement of the case and facts as much of it is argumentative, not factual, in nature. Respondent will instead rely upon the statement of the case and facts contained in the three opinions issued below in this case by the District Court of Appeal, First District: Simpson v. State, 12 FLW 469 (Fla. 1st DCA February 10, 1987)(Simpson I); **Simpson v. State**, 12 FLW 1035 (Fla. 1st DCA, opinion on motion for rehearing filed April 15, 1987)(Simpson II); and, Simpson v. State, 12 FLW 1151 (Fla. 15t DCA, opinion on motion to strike motion for rehearing and to withdraw opinion on rehearing filed May 5, 1987)(Simpson III). In Simpson II, the court, certified the following question deemed to be of great public importance:

WHETHER EMOTIONAL OR PSYCHOLOGICAL TRAUMA  
IS AN INHERENT COMPONENT OF ARMED ROBBERY  
AND, THUS, NOT A VALID REASON FOR  
DEPARTURE FROM THE SENIENCING GUIDELINES?

### III SUMMARY OF ARGUMENT

Since the actual argument is well within the page limitations for a summary of argument, to avoid needless repetition a formal summary of argument will be omitted here.

#### IV ARGUMENT

##### ISSUE PRESENTED

EMOTIONAL OR PSYCHOLOGICAL TRAUMA IS AN INHERENT COMPONENT OF ARMED ROBBERY AND, THUS, NOT A VALID REASON FOR DEPARTURE FROM THE SENTENCING GUIDELINES.

Respondent requests this Court to answer the certified question in the negative. The state made substantially the same argument it makes now in its untimely motion for rehearing. Judge Zehmer, writing for the court below in Simpson II, disposed of the state's arguments and set forth the reasons why the certified question should be answered in the negative, which opinion respondent now adopts as his argument before this Court:

The state contends we erroneously rejected "emotional trauma" as a valid ground for departure from the guidelines sentence for robbery. The state argues that robbery, as defined by section 812.13, Florida Statutes (1985), carries no element of emotional trauma and that it is wrong to equate "inherent component" of the crime with "element" of the crime. While we do not equate "inherent component" of the crime with "element" of the crime, the supreme court has held that a court cannot "use an inherent component of the crime in question to justify departure." State v. Mischler, 488 So.2d 523, 525 (Fla. 1986). Thus, the question is whether emotional trauma is an inherent component of robbery.

Section 812.13 defines robbery as the "taking of money or other property which may be the subject of larceny from the person or custody of another by force, violence, assault, or putting in fear" (emphasis added). The second district has applied the supreme court's analysis in State v. Cote, 487 So.2d 1039 (Fla. 1986) (causing fear and resulting psychological trauma is by statutory definition an inherent component of the crimes of assault and aggravated assault) to the robbery statute and concluded that "the causing of fear and

resulting psychological trauma is by statutory definition an inherent component of the crime of robbery and, thus, not a valid reason for departure." Williamson v. State, 496 So.2d 886, 887 (Fla. 2d DCA 1986). The court went on to say that there may, however, be "instances where the record reveals that the psychological trauma resulting from an offense is so extensive that a departure may be justified." Id. at 888. See also Konyves v. State, 12 FLW 340 (Fla. 2d DCA Jan. 30, 1987)(in order to support departure, emotional trauma to armed robbery victim must arise from extraordinary circumstances which are clearly not inherent in the offense charged); Grant v. State, 12 FLW 236 (Fla. 4th DCA Jan. 16, 1987)(even though fear or emotional trauma are inherent components of the crime of robbery, they were a proper basis for departing in this case because the victim's trauma was greater than that usually associated with a simple robbery). But see Sias v. State, 487 So.2d 1180 (Fla. 3d DCA 1986) (psychological trauma not an inherent component of robbery).

In Mash v. State, 499 So.2d 35 (Fla. 1st DCA 1986), this court did not reach the issue of whether emotional or psychological trauma is an inherent component of armed robbery. The court, noting the conflict among the districts, instead stated, "Regardless of whether psychological trauma is or is not an inherent component of armed robbery, the evidence in this case does not indicate that the victim suffered such unusual trauma as would support a departure." Mash at 143.

We agree with the Second and Fourth districts that emotional or psychological trauma is an inherent component of armed robbery and, thus, is not a valid reason for departure from the sentencing guidelines. Further, there has been no showing by the state that the victim's trauma in this case was "greater than that usually associated with simple robbery." Grant, supra.

12 FLW at 1035.

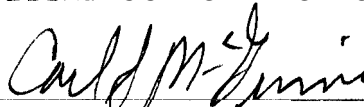


V CONCLUSION

For the reasons asserted herein respondent requests this court to answer the certified question in the negative, and approve the result reached on this issue by the district court.

Respectfully submitted?

MICHAEL E. ALLEN  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT



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CARL S. MCGINNES  
Assistant Public Defender  
Florida Bar #230502  
Post Office **Box** 671  
Tallahassee, Florida 32302  
(904) 488-2458

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a *copy* of the foregoing has been furnished by hand delivery to Mr. Mark **Menser**, **Assisteant** Attorney General, The Capitol, Tallahassee, Florida? and a copy has been mailed to respondent, Mr. Vaughn **Simpson**, #100131, Post Office Box 1500, Cross City, Florida, 32628, this <sup>7th</sup> day of July, 1987.

  
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CARL S. MCGINNES