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IN THE SUPREME COURT OF FLORIDA

RAYMOND JOHNSON,

Petitioner,

v. CASE NO. 77,588

STATE OF FLORIDA,

Respondent.

______________________________/

SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT

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SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

The State respects this court's intent in ordering supplemental briefs. However, the Court has requested briefing on an issue not raised before to the trial or district court. To the extent this Court contemplates relief, it does so on an issue that is not preserved.

STATEMENT OF THE CASE AND FACTS

The State relies on the statement in its brief served April 17, 1991.

SUMMARY OF ARGUMENT

The crime of theft requires a knowing or deliberate act of taking, with the intent to deprive the owner of the property. It does not require intent to steal the items actually taken. Through listing items such as firearms and fire extinguishers, the legislature has declared their theft to be felonious without regard to actual value. The obvious purpose is to discourage theft of the listed items. By requiring specific intent to steal each item, this Court would defeat the purpose of the statute.

Here, Appellant deliberately snatched a purse through an open car window. He intended to take anything of value inside. He can be separately punished for each item separately listed in the theft statute.

ARGUMENT

ISSUE

WHETHER THE THEFT STATUTE REQUIRES INTENT TO STEAL THE ITEMS ACTUALLY TAKEN

In its order of October 17, 1991, this Court directed supplemental briefs on the following questions:

> [1] In deciding the multiple punishment issue, is it relevant whether the defendant had an intent to steal a firearm apart from any intent to steal cash or other valuables?
>
> [2] If so, did such an intent exist here?

The answer to first question is NO; the answer to the second is YES, with limited qualification.

For convenience, the State will answer the questions in reverse order. Candidly, the trial record is silent -- as will usually be the case when the defendant does not testify -- as to Petitioner's thoughts when he snatched the purse. However, the record clearly establishes that Petitioner reached through the window of the victim's car, grabbed her purse, and ran. Inescapably, he intended to take the purse and _anything_ valuable inside it. No more is required. _See_ s. 812.014(1), Florida Statutes ("A person is guilty of theft if he _knowingly_ obtains ... the property of another with intent to, either temporarily or permanently ... deprive.")

The theft statute does not require intent to steal the items actually taken. A few realistic examples illustrate the absurdity of any other interpretation. Suppose the victim -- who took money from her purse to pay for gas -- had taken her wallet containing all the checks, etc. that were stolen; so that the only item of value left in the purse was the handgun. Would Petitioner be able to claim he had no intent to steal a firearm, so that his thievery would be absolved?

Assume Petitioner snatched not a purse, but an old briefcase under the mistaken notion it contained valuables. The briefcase -- belonging to an attorney -- contained a codicil, something of no value to Petitioner. He certainly would not have specifically intended to steal a codicil. Would he be guilty, at most, of stealing a briefcase of minimal value? No -- theft of a codicil is statutorily defined to be third-degree felony theft by §812.014(2)(c)2.

This leads directly to the State's answer to the first question. Interpreting §812.014(2)(c) to require specific intent to steal the listed items would defeat the purpose of the statute, and reach absurd or unreasonable results. Just as a tortfeasor must take a victim as found, a thief must take a "container" (i.e., purse) as found. The thief, who would benefit by stealing numerous valuable items at once, must suffer accordingly when convicted.

A brief look at the statute reveals that the first listed "item" is any property "valued at $300 or more, but less than $20,000." §812.014(2)(c)1. The remaining items, in many instances, would fall into that range of value. Certainly a "motor vehicle" [§812.014(2)(c)4] is likely to be worth at least $300. Does that make its listing mere surplus? No. Courts cannot assume the Legislature enacted surplus or meaningless language. Johnson v. Feder, 485 So.2d 409, 411 (Fla. 1986).

The listing of "any fire extinguisher" [§812.014(2)(c)6] also provides a useful example. Presumably, most common fire extinguishers are worth less than $300. The legislature -- desiring to discourage such thefts for obvious safety reasons -- statutorily defined such thievery as a third degree felony. Based on this example, a second purpose of the statute emerges. That purpose is to discourage theft of certain items, without regard to their actual value. Requiring specific intent to steal these items defeats this purpose.

To read the list of items constituting third degree felony theft as also requiring specific intent to steal those items adds a requirement the Legislature did not expressly place in the statute. It defeats Legislative intent, and leads to the absurd results noted above. See State v. Webb, 398 So.2d 820 (Fla. 1981) (upholding application of stop and frisk law and declaring that a

statutory construction lending to absurd or unreasonable result must be avoided).

Petitioner probably did not take the purse for its inherent value, if any. He intended to take anything of value inside. This intent is sufficient, at least as to separately listed items in §812.014(2)(c).

That "firearm" is separately listed is crucial. The State does not, for example, maintain that $600 worth of "property" would substantiate conviction and punishment for two counts of third degree felony theft. However, each listed item can support a separate court of theft, even if the items are taken in a single act. This is a reasonable and common sense approach, one effectuating the Legislative intent to discourage theft of such items. See Dorsey v. State, 402 So.2d 1178, 1183 (Fla. 1981) (interpreting the definition of wire communications in a "common sense and reasonable manner").

Turn to Petitioner's argument. He cites several cases, including this court's recent decision in Daniels v. State, 16 FLW 5654 (Fla. Oct. 10, 1991). None of these cases stand for the proposition that a thief must intend to steal the items actually taken.

In State v. Dunman, 427 So.2d 166 (Fla. 1983), this court interpreted the contemporary theft statute. It held that the deletion of the word "unlawful" was not sufficient,

by itself, to conclude the Legislature intended to "dispense with intent as an element of the crime [of theft]." Id. at 169. By analogy, the mere listing of items in §812.014(2)(c)1-8 is not a sufficient basis to conclude a thief must specifically intend to take those items in order to be punished twice when two of them are taken simultaneously.

Petitioner's argument continues on the same theme, noting -- for example -- that "intent to steal must exist at the time of the taking." (pet. supp. brief, p. 7). However, he can cite no authority for the additional element he would graft onto the statute: that a thief must intend -- at the time -- to steal the item actually taken.

Petitioner distinguishes between theft of "property" worth $300 to $20,000; and the theft of other listed items. He claims that since a range of value does not define the item, a thief -- to be punished -- need only intend to steal. In contrast, he claims "an accused must actually intend to take the enumerated item." (pet. supp. brief, p. 6).

The distinction is specious. Returning to the State's earlier example, suppose an uneducated thief stole a briefcase for whatever valuables were inside. The briefcase, belonging to a lawyer, contained only papers, including a codicil. No common thief -- if he or she even knew what a codicil was -- would intend to steal a piece of

paper worthless to anyone but its maker. By Petitioner's logic, such thief could not be punished for theft, despite the express listing of "codicil" in §812.014(2)(c)2.

Finally, Petitioner -- in an argument not authorized by this court -- claims there is "identity of elements" (pet. supp. brief, p. 7) between theft of property worth more than $300 and theft of a firearm. The State will not respond except to rely on its earlier brief to this court, at pages 8 through 12.

CONCLUSION

The only reasonable interpretation of the theft statute is that it requires intent to "deprive" the owner of property, but not specific intent to steal the items actually taken. The record shows that Petitioner intended to take everything of value in the purse, which contained "property" and a pistol. Therefore, he was properly convicted and sentenced for two counts of grand theft.

Respectfully submitted,

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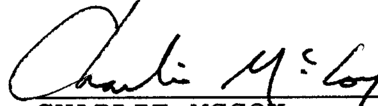

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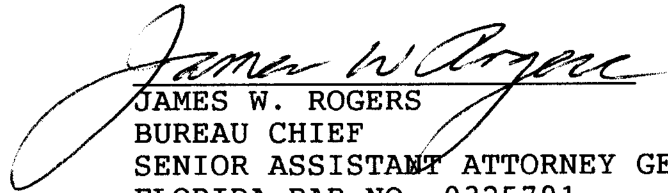

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Supplemental Answer Brief has been furnished by U.S. Mail to Lynn A. Williams, Assistant Public Defender, Leon County Courthouse, Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 12th day of November, 1991.

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