047

IN THE SUPREME COURT OF FLORIDA

RAYMOND JOHNSON,

Petitioner,

v. CASE NO. 77,588

STATE OF FLORIDA,

Respondent.

_____/

SUPPLEMENTAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

This brief is written in response to this Court's request for a supplemental brief on the following question: 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? If so, did such an intent exist here?

SUMMARY OF ARGUMENT

Theft is a specific intent crime.

The criminal intent necessary for larceny is the intent to steal and includes the intent to deprive.

The taking of property without the intent to deprive the owner of his property in the thing taken is not theft. See Fountain v. State, 92 Fla. 262, 266, 109 So. 463 (1926).

Petitioner submits that a review of Section 812.014, Florida Statutes (1989), read as a whole, leads to the conclusion that theft of a firearm or other enumerated item in the statute requires a specific intent to take that item.

The statute specifically states not only that the property be taken "with intent" but that the person "knowingly" obtain the property.

If an accused steals an item valued at more than $300, he is assumed to have the intent to steal that particular item. The law does not go further and require that he know the item's value is $300 or over. The value of the item is an attribute of the item but does not add or detract from the accused's intent to take that particular item.

On the contrary a firearm or other item enumerated in Section 812.014(2)(c)2.-8. is not just a descriptive characteristic of an item but actually defines the property which is stolen. Thus, under the statute as written, an accused must actually intend to take the enumerated item, in this case, a firearm.

This analysis comports with this Court's finding in an analogous situation involving the statute which proscribes trafficking in cocaine. See Section 893.135(1)(b), Florida Statutes (Fla. 1989). Knowledge of the nature of the substance possessed is an essential element to the crime. The statute requires knowing possession. However, an accused need not know the amount of the drug possessed. See Way v. State, 475 So.2d 239 (Fla. 1985).

In the case at bar, petitioner was convicted of two counts of grand theft, one count for the purse and its contents and one count for the firearm that was contained within the purse at the time the purse was taken.

The evidence in this case does not support a finding that the thief intended to take the firearm. The felonious intent to steal must exist at the time of the taking. See Adams v. State, 443 So.2d 1003 (Fla. 2d DCA 1983) rev. denied 449 So.2d 265 (Fla. 1984). The firearm was inside the victim's purse and the entire purse was taken at the time of the theft. There was no evidence presented by the state that the purse was open or the firearm visible at the time of the theft.

If this Court finds in the alternative that legislative intent is only that the accused intend to steal an item, and a separate intent is not required for the enumerated items in Section 812.014(2)(c)2.-8., Florida Statutes, then there is an identity of elements between the offenses of grand theft of property valued over $300 and grand theft of a firearm. To be consistent with this conclusion, Section 812.014(2) must then

be construed as a penalty provision. Thus, separate convictions and punishments will contravene appellant's right to be free from double jeopardy under Article I, Section 9 of the Florida Constitution and Amendments V and XIV of the United States Constitution. See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932); Cleveland v. State, 16 F.L.W. S675 (Fla. October 17, 1991).

Based on the foregoing, petitioner's conviction and sentence for grand theft of a firearm should be reversed with directions that a judgment of acquittal be entered.

ARGUMENT

ISSUE PRESENTED

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? IF SO, DID SUCH AN INTENT EXIST HERE?

A statute should be construed and applied to give effect to the evident legislative intent. Griffis v. State, 356 So.2d 297 (Fla. 1978).

Petitioner submits that a review of Section 812.014, Florida Statutes (1989), read as a whole, leads to the conclusion that theft of a firearm or other items enumerated in Section 812.014(2)(c)2.-8. requires a specific intent to take the enumerated item.

Theft is a specific intent crime. State v. Allen, 362 So.2d 10 (Fla. 1978); State v. Dunmann, 427 So.2d 166 (Fla. 1983); State v. G.C., 572 So.2d 1380 (Fla. 1991); Daniels v. State, 16 F.L.W. S654 (Fla. October 10, 1991).

As recently stated by this Court in Daniels,

> The criminal intent necessary for larceny is animus furandi, Long v. State, 11 Fla. 295 (1866) which means the intent to steal, Hendry v. State, 39 Fla. 235, 22 So. 647 (1897), and includes the intent to deprive. Fountain v. State, 92 Fla. 262, 109 So. 463 (1926).

Daniels, 16 F.L.W. at S655.

The taking of property "without any intent to deprive the owner of his property in the thing taken" is not larceny. Fountain v. State, 92 Fla. 262, 266, 109 So. 463 (1926).

Moreover, the theft statute states not only that the property be taken "with intent" but that the person "knowingly" obtain the property. Section 812.014(1), Florida Statutes, (1989).

Petitioner submits a reading of the theft statute, with the legislative intent in mind, requires a finding that an accused must intend and have knowledge of the particular item (as opposed to the value of the item) being taken.

If an accused steals an item valued at more than $300, he is assumed to have the intent to steal that particular item and commits grand theft under Section 812.014(2)(c)(1). Since the value of the item is an attribute of the item, but does not define the item, the value of the item does not add or detract from the accused's intent to take the item. Thus, the law does not go further and require that the taker know the item's value is over $300.

In sharp contrast, a firearm or other item enumerated in Section 812.014(2)(c)2.-8. is not just a descriptive characteristic of the item but actually defines the item which is stolen. Thus, under the statute as written, an accused must actually intend to take the enumerated item.

This analysis comports with this Court's finding in an analogous statute which proscribes trafficking in cocaine. See Section 893.135(1)(b), Florida Statutes (Fla. 1989). Knowledge of the nature of the substance possessed is an essential element of the crime of trafficking. The trafficking statute requires knowing possession. However, an accused need not know

the amount of the drug possessed. See Way v. State, 475 So.2d 239 (Fla. 1985).

In the case at bar, petitioner was convicted of two counts of grand theft, one count for the purse and its contents and one count for the firearm that was contained within the purse at the time the purse was taken.

The evidence in this case does not support a finding that Johnson intended to take the firearm.

The felonious intent to steal must exist at the time of the taking. See Adams v. State, 443 So.2d 1003 (Fla. 2d DCA 1983) rev. denied, 449 So.2d 265 (Fla. 1984). In the case at bar, the firearm was inside the victim's purse, and it was the purse and its contents, which included the firearm, which were taken at the time of the theft. There was no evidence presented by the state that the purse was open or that the firearm was visible at the time of the taking (T 41-45).

If this Court finds in the alternative that legislative intent is only that the accused intend to steal an item, and a separate intent is not required for the enumerated items in Section 812.014(2)(c)2.-8., Florida Statutes, then there is an identity of elements between the offenses of grand theft of property valued over $300 and grand theft of a firearm. To be consistent with this conclusion, Section 812.014(2) must then be construed as a penalty provision. Thus, separate convictions and punishments will contravene appellant's right to be free from double jeopardy under Article I, Section 9 of the Florida Constitution and Amendments V and XIV of the United

States Constitution. See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932); Cleveland v. State, 16 F.L.W. S675 (Fla. October 17, 1991).

Based on the foregoing argument and citation of authority, appellant submits that the evidence did not support a conviction and sentence on Count III alleging grand theft of a firearm.

CONCLUSION

Based on the argument submitted in petitioner's initial brief and the additional argument herein, petitioner requests this Court reverse the District Court of Appeal's decision and that the case be remanded with directions to enter a judgment of acquittal in the case as to all counts. If the court denies this relief, petitioner's convictions should be reversed and the case remanded for a new trial. Barring reversal of the judgment, petitioner's conviction and sentence for grand theft of a firearm should be reversed with directions that a judgment of acquittal entered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Charlie McCoy, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to Raymond Johnson, this 30th day of October, 1991.

Lynn A Williams
LYNN A. WILLIAMS