

IN THE SUPREME COURT OF THE STATE OF FLORIDA

ISAAC HILL,

Petitioner,

v.

CASE NO. 96,348

STATE OF FLORIDA

Respondent.

INITIAL BRIEF OF PETITIONER

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CERTIFICATE OF TYPE
SIZE AND STYLE

I certify that this brief is typed in 14 point Times New Roman.

STATEMENT OF THE CASE

The Petitioner, ISAAC A. HILL, was arrested in Orange County, Florida, and subsequently charged in the Eighteenth Judicial Circuit, Seminole County, Florida, with one (1) Count of Armed Burglary and four (4) Counts of Armed Robbery (R. 1-2). Subsequently the State of Florida amended the Information and charged the Petitioner with one (1) Count of Unlawful Possession of a Firearm by a Violent Career Criminal, one (1) Count of Armed Burglary to a Dwelling, three (3) Counts of Robbery with a Firearm, and one (1) Count of Attempted Robbery with a Firearm. (R. 16-19)

On June 9, 1997, the Petitioner's Counsel filed a Motion to Suppress Evidence (R. 104-106). Counsel also filed a Motion to Sever Offenses requesting that Count One be severed from the remaining Counts. (R107-108) Finally, counsel filed a Motion to Dismiss For Violation of Double Jeopardy (R, 109-110).

The State of Florida, on or about June 12, 1997, filed a Second Amended Information (R. 111-113). Petitioner was arraigned on the Second Amended Information on June 16, 1997 (R. 115).

The State of Florida filed an Answer to Defendant's Motion to Sever Offenses agreeing that the Motion was well taken (R. 116). The State also filed a Response to Defendants' Motion to Dismiss for Violation of Double Jeopardy. (R. 117). Finally,

the State filed a Response to and Memorandum of Law in Opposition to the Defendant's Motion to Suppress Evidence (R. 133-185).

On August 12, 1998, a hearing was conducted on the three (3) Motions filed by the Petitioner. The Motion to Sever Offenses was granted. The Motion to Suppress Evidence and the Motion to Dismiss For Violation of Double Jeopardy were both denied (R. 186-188)

On January 5, 1998, Petitioner filed a Motion for Continuance of Trial (R. 201-202). The Motion was granted (R. 203). On January 26, 1998, the Petitioner filed a Motion for Continuance and to Schedule Specific Trial Date (R. 204-206). The Motion was denied (R. 207). On January 30, 1998, the Petitioner filed a Supplemental Motion for Continuance and to Schedule Specific Trial Date (R. 208-211). The Supplemental Motion for Continence was denied on February 2, 1998. (R. 216)

Jury selection took place on February 2, 1998 (R. 216). The testimony commenced on February 4, 1998 (R. 217). On February 6, 1998, the Petitioner was found guilty as charged on Counts 2, 3, 4, 5, and 6. (R. 288-292). Petitioner was adjudicated guilty of all Counts (R. 293-294).

The Petitioner filed a Motion for Judgment of Acquittal and Motion for New Trial on February 12, 1998 (R. 296-304). The Motion was heard on March 19, 1998,

and denied by the Court (R. 335).

On March 24, 1998, the State filed a Notice of Intention to Seek Sentencing as Habitual Felony Offender (R. 336). The State had previously filed a Notice of Intention to Seek Sentencing as Violent Career Criminal (R. 20).

On April 6, 1998, Petitioner was found to be a Violent Career Criminal (R. 351-352). Petitioner was sentenced to life imprisonment on Counts 2, 3, 4, and 5 and to forty (40) years imprisonment on Count 6, all sentences to run concurrently with each other. (R. 357-365)

The Petitioner then filed his Notice of Appeal with the Fifth District Court of Appeal (R 378-379). After the submission of briefs and oral argument, the Court of Appeals affirmed the Petitioner's convictions and sentences. In affirming Petitioner's sentences the Appellate Court found that the Violent Career Criminal provisions of Florida Statute Section 775.084, as amended by Chapter 95-182, Laws of Florida, was constitutional as it did not violate the single subject rule of Article III, Section 6, Florida Constitution. In making this finding the Appellate Court certified this matter to the Florida Supreme Court as being in conflict with Thompson v. State, 708 So 2d 315 (Fla 2d D.C.A.) rev-granted 717 So 2d 538 (Fla. 1998).

The Petitioner then filed a timely Notice to Invoke Discretionary Jurisdiction of Supreme Court.

STATEMENT OF THE FACTS

On July 8, 1996, Donald Judd was asleep at his residence located at 101-C Georgetown Drive, Casselberry, Florida. He woke up and decided to get a glass of milk (T. 166). He opened his bedroom door and saw a black male with a mask pointing a gun at his head. The black male ordered him to lay back down on the bed (T. 166). The black male had on a black ski mask with a single oval, black gloves, and a flannel like shirt with green, white and bluish print on it (T. 167). Mr. Judd could tell that there was a second individual in the residence (T. 167).

Mr. Judd laid face down on the bed but before doing so could tell that the black male that encountered him had a short-nosed revolver (T. 168).

As Mr. Judd was laying face down he heard the second individual hollering at Charlotte Gardner to lay face down on the bed (T. 169). Mr. Judd noticed the second individual had an automatic weapon and was wearing baggie blue jeans. Judd could not tell if they were long pants or shorts as he could only see the second individual from his hip to his knees (T. 170). He could determine that the second individual was black (T. 170).

From the noise Mr. Judd heard, he could tell that the individuals were going

through drawers and removing guns from his gun rack (T. 171). They were also asking Judd and Gardner for money, jewelry and guns (T. 171). After the individuals left, Judd determined that at least his wallet, a .22 shotgun, and his BB guns were missing (T. 174).

On July 8, 1996. Charlotte Gardner lived at the residence located at 101-C Georgetown Drive, Casselberry, Florida with Donald Judd (T. 194). On that evening she went to bed at about 9:30 p.m. and was awakened by someone hollering at her to turn over and put her head down or she was going to die (T. 195). As she rolled over she saw a silver gun pointed at her head (T. 196). She could tell there were two (2) individuals in her bedroom (T. 196).

Ms. Gardner saw the individual on her side of the bed wearing a short sleeved shirt with a greenish design on it. She did not get a good enough look at the shirt to recognize it again (T. 197). She also could tell the individual was wearing a glove on the hand in which he was holding the gun (T. 198). Finally she could tell the individual was black (T. 199).

After it was determined that the individual had left, Ms. Gardner determined that her purse and jewelry box had been taken (T. 206). Her jewelry box contained an assortment of jewelry (T. 206).

Cassandra Gardner was asleep in her bedroom where she lived at the residence

with Donald Judd and her mother Charlotte Gardner. Her best friend Jodie Molnar was asleep in bed with her (T. 221). Cassandra was awakened when her bedroom light was turned on (T. 222). She saw a black man wearing a black ski mask with a black gun (T. 222). He was approximately five-nine or five-ten and had on denim jean shorts and a tan and white collared shirt (T. 222-223).

Cassandra saw the individual take her purse that was lying on the floor at the end of her bed (T. 225).

Jodie Molnar was spending the night with Cassandra Gardner on July 8, 1996 (T. 262). She went to sleep between 9:00 p.m. and 9:30 p.m. only to be awakened by the lights being turned on (T. 263). She saw a black man with a black ski mask holding a small dark gun (T. 264). The man had on a tan colored shirt with maybe some black color to it as well as jean shorts (T. 264). He also had on black gloves (T. 265). None of Ms. Molnar's property was taken (T. 266).

Responding to the 911 call Mr. Judd had made, Deputy John Helms responded to 101-C Georgetown (T. 155). He was dispatched at 9:46 p.m. and arrived on the scene at 9:50 p.m. (T.156).

Officer Calder Haas, Orlando Police Department, was on routine patrol on the evening of July 8, 1996, when, at approximately 10:51 p.m., he conducted a traffic stop on a gray Buick LeSabre in Orlando, Florida (T. 30). The LeSabre had an

expired tag on it (T. 31). Haas approached the vehicle and determined that it contained a driver and a front seat passenger (T. 32). Haas asked the driver for a driver's license, registration, and proof of insurance (T. 32). The driver was identified as Larry Thomas. The passenger was identified as the Petitioner, ISAAC HILL (T. 33).

Haas ran the tag on the vehicle and discovered that it had been reported stolen (T. 33). He called for assistance (T. 34). Once assistance arrived Haas had Thomas exit the vehicle (T 35). Other officers had the Petitioner exit the vehicle (T 36). Officer Roy McKinley, Orlando Police Department, began to look in the vehicle when the Petitioner ran from the scene (T 36).

Haas chased the Petitioner (T 37). He was found under a house and returned to the scene of the traffic stop (T 38). Petitioner was placed in the rear of a patrol vehicle in handcuffs (T 38). After being placed in the back of the patrol vehicle, Petitioner attempted to escape but was caught five (5) to six (6) feet from the patrol vehicle (T 39). Eventually the Petitioner and Thomas were taken to the Orlando Police Department (T 39).

Officer Roy McKinley, Orlando Police Department responded to assist Officer Haas (T 67). McKinley encountered the Petitioner and asked him if he had drugs or weapons to which the Petitioner stated he did not (T 68). He then asked the Petitioner

to exit the vehicle (T 68). He patted down the Petitioner for weapons and found none (T 69).

As Petitioner exited the vehicle McKinley believed he saw the butt of a gun under his seat (T 69). McKinley started to lean into the car when the Petitioner began to run off (T 70). Other officers chased the Petitioner.

McKinley secured Thomas in his patrol vehicle (T 71). He then went back to the LeSabre. He found a gun under the passenger seat and also found a gun under the driver's seat (T 74). The gun under the passenger seat was a small blue steel revolver (T 74). The gun under the driver's seat was a semiautomatic (T 74). A purse, a ski mask, and some gloves were also found under the passenger's seat (T 75). A pillow case was found in the glove compartment containing women's jewelry (T 76). Money, a knife and several other weapons were found in the vehicle (T 77).

Jerri Murray, who is a crime scene technician with the Orlando Police Department, arrived on the scene where the Petitioner had been arrested (T 105). She seized the .38 revolver that had been under the passenger seat and a .22 semiautomatic that had been under the driver's seat (T 107). She seized a shotgun and a BB gun from the trunk (T 107). She also took a blue pillow case that contained items from the glove box (T 113).

Later Ms. Murray seized a white T-shirt and a white collared shirt with

miscellaneous beach chairs on it from the Petitioner (T 128). The Petitioner was wearing the white T-shirt underneath the white collared shirt (T 128). She also seized two pair of blue jeans that the Petitioner was wearing (T 128). Finally she seized a multicolored blue shirt that Larry Thomas was wearing (T 128).

After the items that were seized from the gray Buick LeSabre were taken to the Orlando Police Department, Officer McKinley looked through the items and found several telephone numbers and eventually came in contact with Charlotte Gardner (T 79). He discovered that she had been the victim of a crime (T 80).

Donald Judd and Charlotte Gardner went to the Orlando Police Department (175). There Mr. Judd saw the jewelry box that had been taken from his residence as well as the pillow case (T 177). He also saw the guns that had been taken from his residence (T 178). His wallet was not recovered (T 178). Mr. Judd identified the shirt that had been seized from Larry Thomas as the shirt worn by the individual he met at his bedroom door (T 181). The mask and pair of gloves seized from the Buick LeSabre were identified as those worn by the individual Mr. Judd met at his bedroom door (T 182). Mr. Judd got back \$45 of the \$110 that was taken (T 189).

When Ms. Gardner went to the Orlando Police Department she identified a coin of hers, her jewelry, her purse and its contents (T 209). Her wallet with approximately \$65 in one dollar bills was not recovered (T 214).

Cassandra Gardner did not go to the Orlando Police Department but she did get back her gold earrings and her computer organizer (T 226). Cassandra's wallet, pager and purse were not recovered (T 229). Cassandra, during the trial, was shown the shirt that was seized from the Petitioner on July 8, 1996 (T 226). She indicated it could have been the shirt worn by the individual who was in her room on July 8, 1996, but she could not say for sure (T 227). It may or may not have been the shirt that was worn by the individual that had been in her bedroom (T 231).

During the trial, Jodie Molnar was shown the shirt that was seized from the Petitioner on July 8, 1996 (T 270). She could not positively say it was the same shirt worn by the individual who entered the bedroom on July 8, 1996 (T 271).

Latoya Sapp testified on behalf of the Petitioner (T 297). She indicated that prior to July 8, 1996 she had called the Orlando Police Department to report that the Petitioner had taken her car (T 299). Ms. Sapp also testified that on many occasions she told the Petitioner he was going to jail (T 302).

The Petitioner also testified at the trial (T 336). He indicated that he had been in the car for fifteen (15) to twenty (20) minutes, maybe thirty (30) minutes before it was stopped by Officer Haas (T 340). Earlier in the evening he had been at Ms. Sapps' house (T 341). From there he walked to a store named Big B (T 341). It was at Big B's that he saw Larry Thomas (T 342). The Petitioner and Thomas rode in

Thomas' car to the residence of a girl named Kim (T 347). Kim was not home so they headed back to Big B (T 349). While heading back to the Big B, they were stopped by Officer Haas (T 350). Petitioner testified that after he got out of Thomas' car he thought about the warrant he thought he had for taking Latoya Sapp's car (T 353). For that reason he kept on going (T 353).

Petitioner indicated he did not know what was in the trunk of the car, in the glove box, or underneath the passenger seat (T 354-355). Petitioner denied that he was in the Judd/Gardner home the night they were robbed (T 346).

SUMMARY OF ARGUMENT

The Petitioner contends in Point I that the Violent Career Criminal provisions of Florida Statute Section 775.084 (1) (c) are unconstitutional. The statute is unconstitutional as Chapter 95-182, Laws of Florida, violate the single subject rule of Article III, Section 6, Florida Constitution.

ARGUMENT

POINT I

THE VIOLENT CAREER
CRIMINAL PROVISIONS OF
FLORIDA STATUTE
SECTION 775.084, AS
AMENDED BY CHAPTER
95-182, LAWS OF FLORIDA,
ARE UNCONSTITUTIONAL.

The Petitioner contends that the Violent Career Criminal provisions of Florida Statute Section 775.084, as amended by Chapter 95-182, Laws of Florida, are unconstitutional as they violate the single subject rule of Article III, Section 6, Florida Constitutional. Therefore Petitioner's sentences as a Violent Career Criminal should be reversed and this cause be remanded for re-sentencing of the Petitioner in accordance with the valid laws in effect at the time of the commission of the offenses.

Article III, Section 6, Florida Constitution provides:

“Every law shall embrace but one subject
and matter properly connected therewith,
and the subject shall be briefly expressed in
the title.”

Therefore the question in this case is whether or not Chapter 95-182, Laws of Florida, embraces but one subject and matter that is properly connected.

Sections 1 through 7 of Chapter 95-182 is entitled “Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995.” These sections create and define the violent career criminal sentencing category and provide sentencing procedures and penalties Thompson v. State 708 So 2d 315 (Fla 2d DCA) rev-granted 717 So 2d 538 (Fla. 1998).

Section 8 of Chapter 95-182 creates a civil cause of action for damages for injuries inflicted in violation of a domestic violence injunction. Thompson supra, at 316. Section 9 of the act creates substantive and procedural rules regulating private damages actions brought by victims of domestic abuse. Thompson supra at 316. Finally, section 10 imposes procedural duties on the court clerk and the sheriff regarding the filing and enforcement of domestic violence injunctions. Thompson supra at 317.

A similar issue has been addressed by this Court in State v. Johnson 616 So 2d 1 (Fla. 1993). This Court reviewed Chapter 89-280, Laws of Florida. This law dealt with the Habitual Offender statute and the licensing of private investigators and their authority to repossess personal property. This Court found Chapter 89-280 unconstitutional as it violated the single subject rule of Article III, Section 6, Florida Constitution, stating that the two subjects had “absolutely no cogent connection” and were not “reasonably related to any crisis the legislature intended to address.”

Johnson, supra at 4.

Such is the situation in the case at bar. There is no “cogent connection” between sentencing for violent career criminals and providing civil remedies for victims of domestic violence. They are also not “reasonably related to any crisis the legislature intended to address.” They are two distinct subjects. Thompson, supra at 317.

As stated in Thompson, supra at 317:

“. . . Nothing in section 2 through 7 addresses any facet of domestic violence, and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them. It is fair to say that these two subjects “are designed to accomplish separate and dissociated objects of legislative effort. . .”

For these reasons the Second District Court of Appeal in Thompson, supra found Chapter 95-182 unconstitutional. This same reasoning should be applied by this Court in also finding Chapter 95-182 unconstitutional.

The Court in Thompson, supra also indicated in footnote 1, page 317 that for the purpose of future challenges to Florida Statute Section 775.084, as amended by Chapter 95-182, Laws of Florida, the “window” period for said challenges to the constitutionality of the statute ran from offenses committed from October 1, 1995,

to May 24, 1997. Petitioner was alleged to have committed the offenses for which he was found guilty on July 8, 1996, and he was sentenced on April 6, 1998. Therefore the offenses were committed during the “window” period enunciated in Thompson but he was sentenced after the “window” period. The Court in Thompson reversed Thompson’s sentences and remanded for sentencing in accordance with the valid laws in effect at the time of sentencing. Petitioner contends that this Court should declare Florida Statute Section 775.084, as amended by Chapter 95-182, Laws of Florida unconstitutional and reverse Petitioner’s sentences but unlike the Court in Thompson remand this cause for re-sentencing in accordance with the valid laws in effect at the time of the commission of the offenses.

For the reasons stated above, this Court should declared Florida Statute Section 775.084, as amended by Chapter 95-182, Laws of Florida unconstitutional and remand this cause to the trial Court for Petitioner’s re-sentencing in accordance with the valid laws in effect at the time of the commission of the offenses.

CONCLUSION

For the reasons stated in Point I, the Violent Career Criminal provisions of Florida Statute Section 775.084 (1) (c) are unconstitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery to Robin A. Compton, Assistant Attorney General, Office of the Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, Florida 32118, on this the _____ day of _____, 1999.

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