

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CLUSSEALUX

DEC 27 1999

CLERK, SUPREME COURT

BY DJ

MICHAEL CONSIGLIO,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 1999-125
DCA No. 98-3528

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court
of Appeal, Fourth District,
State of Florida

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

PAUL E. PETILLO
Assistant Public Defender
Attorney for Michael Consiglio

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
CERTIFICATE OF FONT SIZE	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	4

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH <u>WARD V. STATE</u> , 730 So.2d 728 (Fla. 1st DCA 684 So.2d 732 (Fla. 1996)).	5
CONCLUSION	7
CERTIFICATE OF SERVICE	7

AUTHORITIES CITED

CASES CITED

PAGE

<u>Cruller v. State</u> , 24 Fla. L. Weekly D2639 (Fla. 3rd DCA Nov. 24, 1999)	5, 6
<u>Ward v. State</u> , 730 So.2d 728 (Fla. 1st DCA 1999)	5

PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and appellee in the lower courts.

CERTIFICATE OF FONT SIZE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

The petitioner was convicted of carjacking and robbery. In his appeal to the Fourth District Court of Appeal he argued that his dual convictions violated double jeopardy. The Fourth District Court of Appeal described the facts of the case as follows:

While beating the victim, appellant first demanded the keys to the victim's car after his accomplice jumped in the vehicle and noticed the keys were not inside. The victim reached into her pocket and gave appellant the keys. During the beating, appellant demanded that the victim give him money. She complied. At that point the robbery was complete. Subsequently, the appellant drove off in the victim's car, completing the offense of carjacking.

Consiglio v. State, 24 Fla. L. Weekly D2575 (Fla. 4th DCA Nov. 17, 1999).

The Fourth District Court of Appeal affirmed petitioner's dual convictions on the following analysis:

As the supreme court stated in Brown v. State, 430 So.2d 446, 447 (Fla.1983), "[w]hat is dispositive is whether there have been successive and distinct forceful takings with a separate and independent intent for each transaction." While the temporal separation was very minimal in this case, there were two separate acts: (1) an intent and act to steal money from the victim; and (2) an intent and act to steal the victim's car. See, e.g., Simboli v. State, 728 So.2d 792, 793 (Fla. 5th DCA 1999), rev. denied, 741 So.2d 1137 (Fla.1999); Mason v. State, 665 So.2d 328, 329

(Fla. 5th DCA 1995). Conviction for both crimes under these circumstances does not violate principles of double jeopardy.

24 Fla. L. Weekly at D2575.

Petitioner's notice to invoke discretionary jurisdiction of this court was timely filed December 14, 1999.

SUMMARY OF THE ARGUMENT

The decision in this case expressly and directly conflicts with Ward v. State, 730 So.2d 728 (Fla. 1st DCA 1999). In Ward, as here, the victim was robbed of her car and goods in one criminal episode. The First District Court of Appeal held that under double jeopardy principles the defendant could not be convicted of armed robbery and armed carjacking, where the victim's property was taken as part of same criminal transaction or episode, without any temporal or geographic break, and nothing in either statute expressly authorized separate convictions and sentences when both offenses arose out of single incident. This court should accept jurisdiction to resolve the conflict between Ward and Consiglio.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL
IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS
WITH WARD V. STATE, 730 So.2d 728 (Fla. 1st
DCA 684 So.2d 732 (Fla. 1996)).

In Ward v. State, 730 So.2d 728 (Fla. 1st DCA 1999), the defendant robbed the victim of her car and goods in one criminal episode. The First District Court of Appeal held that under double jeopardy principles the defendant could not be convicted of armed robbery and armed carjacking, where the victim's property was taken as part of same criminal transaction or episode, without any temporal or geographic break, and nothing in either statute expressly authorized separate convictions and sentences when both offenses arose out of single incident.

In the instant case, the victim's truck and money were taken as part of the same criminal transaction or episode, without any temporal or geographic, yet the Fourth District Court of Appeal affirmed appellant's dual convictions. Accordingly, there is express and direct conflict of decisions. Indeed, the Third District Court of Appeal recently affirmed dual convictions for robbery and carjacking in Cruller v. State, 24 Fla. L. Weekly D2639 (Fla. 3rd DCA Nov. 24, 1999), and certified conflict with Ward. The facts in Cruller are very similar to the facts in the instant

case:

Defendant and an accomplice robbed the victim in this case after following him home. While his accomplice pointed a gun at the victim's head and demanded his car keys, defendant took the victim's wallet out of his pocket. Both assailants then drove off in the stolen car. As in Smart v. State, 652 So.2d 448 (Fla. 3d DCA 1995), we find that under these circumstances the defendant was properly convicted for both of the separate offenses of robbery and carjacking. Nevertheless, because our decision conflicts with Ward v. State, 730 So.2d 728 (Fla. 1st DCA 1999), we certify our conflict with the majority's decision in that case.

Cruller v. State, 24 Fla. L. Weekly D2639 (Fla. 3rd DCA Nov. 24, 1999) (emphasis added). Like Cruller, the instant case conflicts with Ward. Accordingly, this court should accept review of this case to resolve this express and direct conflict.

CONCLUSION

Petitioner respectfully requests this Court to accept review of the instant case and order briefs on the merits.

Respectfully submitted,

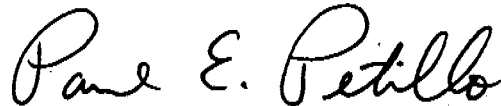
RICHARD JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street\6th Floor
West Palm Beach, Florida 33401
(407) 355-7600



Paul E. Petillo
Assistant Public Defender
Florida Bar No. 508438

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to James Carney, Assistant Attorney General, 1655 Palm Beach Lakes Blvd, Suite 300, West Palm Beach, Florida 33401 by courier this 23rd day of December, 1999.



Attorney for Michael Consiglio

PD

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JULY TERM 1999

MICHAEL CONSIGLIO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 98-3528

As the supreme court stated in *Brown v. State*, 430 So. 2d 446, 447 (Fla. 1983), “[w]hat is dispositive is whether there have been successive and distinct forceful takings with a separate and independent intent for each transaction.” While the temporal separation was very minimal in this case, there were two separate acts: (1) an intent and act to steal money from the victim; and (2) an intent and act to steal the victim’s car. See, e.g., *Simboli v. State*, 728 So. 2d 792, 793 (Fla. 5th DCA 1999), *rev. denied*, No. 95-410 (Fla. Aug. 19, 1999); *Mason v. State*, 665 So. 2d 328, 329 (Fla. 5th DCA 1995). Conviction for both crimes under these circumstances does not violate principles of double jeopardy.

Opinion filed November 17, 1999

DELL and STONE, JJ., concur.

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Royce Agner, Judge; L.T. Case No. 97-5652 CF10A.

NOT FINAL UNTIL THE DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.

Richard L. Jorandby, Public Defender, and Paul E. Petillo, Assistant Public Defender, West Palm Beach, for appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellee.

WARNER, C.J.

We affirm appellant’s convictions for carjacking and robbery against his claim that conviction of both violates double jeopardy, as we conclude that the evidence supports two separate acts and separate property. While beating the victim, appellant first demanded the keys to the victim’s car after his accomplice jumped in the vehicle and noticed the keys were not inside. The victim reached into her pocket and gave appellant the keys. During the beating, appellant demanded that the victim give him money. She complied. At that point the robbery was complete. Subsequently, the appellant drove off in the victim’s car, completing the offense of carjacking.