

IN THE SUPREME COURT OF FLORIDA
Case No. SC19-1366 (L.T. No. 3D15-2815)

STATE OF FLORIDA,

Petitioner,

vs.

JOHN GARCIA,

Respondent.

STATE OF FLORIDA'S BRIEF ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

ASHLEY MOODY
ATTORNEY GENERAL

MICHAEL W. MERVINE, FBN 0692131
MIAMI BUREAU CHIEF
CRIMINAL APPEALS

JEFFREY R. GELDENS
Assistant Attorney General
Florida Bar No. 0673986
Office of the Attorney General
1 SE 3rd AVENUE, #900
Miami, Florida 33131
(305) 377-5441
(305) 377-5655 (Fax)
Primary: CrimAppMia@myfloridalegal.com
Secondary: jeffrey.geldens@myfloridalegal.com
Counsel for Petitioner, State of Florida

RECEIVED, 09/13/2019 12:09:30 PM, Clerk, Supreme Court

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	5
I. THE DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT’S DECISION IN <i>KNIGHT V. STATE</i>.....	5
II. IF THE STATE’S CASE WAS ENTIRELY CIRCUMSTANTIAL, THERE IS CONFLICT WITH CASES APPLYING THAT TEST.....	7
CONCLUSION	10
CERTIFICATE OF SERVICE.....	11
CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS	11

TABLE OF CITATIONS

	Page(s)
Cases	
<i>Bedford v. State</i> , 589 So. 2d 245 (Fla. 1991)	8
<i>Carpenter v. State</i> , 785 So. 2d 1182 (Fla. 2001)	9
<i>Finney v. State</i> , 660 So. 2d 674 (Fla. 1995)	9
<i>Fla. Insurance Guaranty Ass’n, Inc., v. Devon Neighborhood Ass’n, Inc.</i> , 67 So. 3d 187 (Fla. 2011)	4
<i>Garcia v. State</i> , 2019 WL 1924669 (Fla. 3d DCA May 1, 2019)	2
<i>Heiney v. State</i> , 447 So. 2d 210 (Fla. 1984)	9
<i>Jackson v. State</i> , 180 So. 3d 938 (Fla. 2015)	5, 10
<i>Johnston v. State</i> , 863 So. 2d 271 (Fla. 2003)	5
<i>Knight v. State</i> , 186 So. 3d 1005 (Fla. 2016)	4, 6, 7, 8
<i>Knowles v. State</i> , 848 So. 2d 1055 (Fla. 2003)	4
<i>Lincoln v. State</i> , 459 So. 2d 1030 (Fla. 1984)	9
<i>Mosely v. State</i> , 46 So. 3d 510 (Fla. 2009)	6
<i>Orme v. State</i> , 677 So. 2d 258 (Fla. 1996)	5, 10
<i>Reynolds v. State</i> , 934 So. 2d 1128 (Fla. 2006)	5
<i>Snyder v. State</i> , 715 So. 2d 367 (Fla. 5th DCA 1998)	6
<i>State v. Barthell</i> , 554 So. 2d 17 (Fla. 3d DCA 1989).....	6

<i>State v. Law</i> , 559 So. 2d 187 (Fla. 1989)	9
<i>State v. Stacey</i> , 482 So. 2d 1350 (Fla. 1985)	4
 Statutes	
Art. V, § 3(b)(3), Fla. Const.....	4
§ 812.012(10)(c), Fla. Stat	6
 Rules	
Florida Rule of Appellate Procedure 9.210(a)(2)	11

STATEMENT OF THE CASE AND FACTS

At issue is a jury verdict convicting John Garcia of theft from, and second-degree murder of, his paramour. The Third District Court of Appeal explained:

In 1999, Larissa Macriello relocated to the United States from Panama. Over the years, she lived in Rhode Island, Maryland, North Carolina and Florida. In the summer of 2009, Ms. Macriello moved to Jacksonville Beach, Florida to live with her brother, Roderik Mokillo. In early 2011, she moved to Miami. In early June 2013, Ms. Macriello disappeared suddenly and without a trace.

Ms. Macriello was close to her family, staying in frequent contact with her mother and siblings via telephone, email, text message and social media. She last communicated with her brother . . . via text message in late May of 2013. . . She last spoke to her mother on the telephone on June 1, 2013.

Ms. Macriello's landlord last saw and spoke to Ms. Macriello on June 3, 2013. Ms. Macriello told the landlord that she was waiting for her passport to arrive so that she could return to Panama to visit her mother.

On June 10, 2013, between noon and 2 p.m., the landlord heard Ms. Macriello's car being parked in her usual parking spot The landlord did not . . . see the [driver]. That same day. . . around noon, a taxi driver picked up the defendant, John Garcia, and an unknown woman (not Ms. Macriello) from a . . . store located several blocks from Ms. Macriello's residence.

After Ms. Macriello failed to respond to text messages, or to answer or return telephone calls, Mr. Mokillo traveled to Miami on June 18, 2013 to file a missing person report. That same day . . . officers from the Miami-Dade County Police Department (“MDPD”) gained access to Ms. Macriello's apartment Ms. Macriello was not inside the apartment. The police walk-through of the apartment revealed no signs of a struggle, and nothing out of the ordinary. The police did not see her purse, laptop computer, cellphone or car keys in the apartment; these items were never found. The officers observed Ms. Macriello's

car in the parking space outside the apartment building, but did not search it . . . [because] Ms. Macriello was not inside it. The officers' subsequent calls to hospitals and jails in Miami-Dade . . . and Broward . . . revealed no information [about] Ms. Macriello. . . .

Garcia v. State, 2019 WL 1924669, * 1-2 (Fla. 3d DCA May 1, 2019) (App. 2-4).

After the victim's disappearance, Mr. Garcia acquired most of her money:

Ms. Macriello had checking and savings accounts with Bank of America ("BOA"). . . .

The BOA account records revealed that, around the date of Ms. Macriello's disappearance (June 3, 2013), there was approximately \$ 24,000 in her BOA checking account and \$ 23,000 in her BOA savings account. Beginning on June 5, 2013 and going through August 15, 2013, however, the bulk of her BOA account balances was drained through a series of transactions, all to the benefit of Mr. Garcia – specifically: (i) on June 5 and 12, 2013, Mr. Garcia made two ATM withdrawals from Ms. Macriello's BOA savings account, using her ATM card and personal identification number ("PIN"); (ii) Mr. Garcia deposited two \$ 20,000 personal checks (dated June 5 and 10, 2013, respectively), written by Ms. Macriello to Mr. Garcia, into his own BOA checking account; and (iii) multiple online transfers were made from Ms. Macriello's BOA checking account to Mr. Garcia's BOA checking account totaling \$ 4,700.

(App 4-5). Surveillance video showed Mr. Garcia making the ATM withdrawals, including one at a drive-up ATM while driving the victim's car. (App. 5, n2).

The investigation of Mr. Garcia also revealed the following connections:

. . . . cellphone records for Ms. Macriello's and Mr. Garcia's cellular accounts [showed] that there were frequent calls between Mr. Garcia's and Ms. Macriello's cellphones between the time Ms. Macriello was last seen (June 3, 2013) and when her cellphone was shut off (July 7, 2013). Other than calling voicemail, Ms. Macriello's cellphone made no outgoing calls to anyone other than Mr. Garcia. Moreover, during this timeframe, numerous calls between Mr. Garcia's cellphone and Ms.

Macriello's cellphone “pinged” off the same cellular antenna, within the same sector, indicating that the cellphones were within close proximity to each other at the time of the calls.

. . . MDPD crime scene investigators (“CSI”) . . . found that her car was unlocked, smelled of cleaning agents, and was thoroughly clean inside. The driver's seat was positioned further back to accommodate a driver taller than Ms. Macriello. CSI sprayed the interior of the vehicle with luminol, which reacts to hemoglobin in blood. The luminol reacted to a fluid in the trunk (possibly detecting the outline of a purse) and to a fluid on the front passenger floorboard (possibly detecting the outline of a hammer). The affected area was removed and tested, but the results came back negative for blood. CSI found two strands of Mr. Garcia's hair in the vehicle interior, and one DNA sample matching Mr. Garcia on the car's center console.

(App. 5-6). Mr. Garcia also explained to the police his ties to the victim:

In October 2014, Mr. Garcia voluntarily went to the police station to discuss Ms. Macriello's disappearance with an MDPD homicide detective. . . . Mr. Garcia stated that he met Ms. Macriello on a dating website. He admitted to having an ongoing sexual relationship with Ms. Macriello, . . . Mr. Garcia claimed that he had last seen Ms. Macriello sometime between July 4 and August 2013.

Mr. Garcia told the . . . detective that he had lent money to Ms. Macriello on occasion; but, Mr. Garcia did not tell the detective about a specific loan to Ms. Macriello where she had executed a promissory note memorializing a \$ 20,000 loan from him. Mr. Garcia denied having any access to, or taking any money from, Ms. Macriello's BOA accounts. Mr. Garcia also told the detective that he had only ever been in Ms. Macriello's car as a passenger.

During the taped police interview, Mr. Garcia's wife confronted him. [He told her] that he and Ms. Macriello were just friends, . . . Mr. Garcia initially denied receiving any money from Ms. Macriello, but later admitted . . . that Ms. Macriello had given him two \$ 20,000 checks because [she] owed him money. Mr. Garcia [said] he did not kill Ms. Macriello and that Ms. Macriello would show up some day. . . .

(App. 6-7). The Third District reversed the jury's verdict. (App. 27-28).

SUMMARY OF THE ARGUMENT

The State invokes this Court's "misapplication" jurisdiction, which this Court has long treated as a variety of its "express and direct" conflict jurisdiction from Section 3(b)(3) of Article V of the Florida Constitution. *See, e.g., Fla. Insurance Guaranty Ass'n, Inc., v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187, 189, n. 1 (Fla. 2011) ("Misapplication of our precedent provides a basis for express and direct conflict jurisdiction"); *Knowles v. State*, 848 So. 2d 1055, 1056 (Fla. 2003) (we have for review the decision . . . which misapplies our precedent in *Goodwin v. State* . . . we have jurisdiction); *State v. Stacey*, 482 So. 2d 1350, 1350 (Fla. 1985) ("We have jurisdiction because the court below misapplied controlling case law to the facts of the case."). Here, the decision triggers misapplication jurisdiction.

First, as to the grand theft conviction, the decision below conflicts with this Court's directive that "[c]ourts should ask whether the evidence *of that particular defendant's guilt* is entirely circumstantial, not whether all of the State's evidence of the crime is circumstantial." *Knight v. State*, 186 So. 3d 1005, 1010 (Fla. 2016). The court below stated "[t]he State presented direct evidence that Mr. Garcia had knowingly obtained Ms. Macriello's property – i.e., the \$ 1,000 he withdrew from the BOA ATMs" (App. 16) but applied the circumstantial evidence test. This

conflicts with controlling precedent because the “State[’s] [evidence] was not entirely circumstantial.” *Reynolds v. State*, 934 So. 2d 1128, 1147 (Fla. 2006).

Second, as to the grand theft conviction, even if the case is entirely circumstantial, the Third District misapplied the rule that “[o]nce the State meets this threshold burden [to present evidence inconsistent with the defendant’s theory], it becomes the jury’s duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt.” *Johnston v. State*, 863 So. 2d 271, 284 (Fla. 2003).

Third, as to the murder conviction, which was entirely circumstantial, the Third District increased the State’s burden of proof. The State needs to rebut a theory of innocence only to the extent that “[the defendant’s] theory of events is possible in th[e] case.” *Jackson v. State*, 180 So. 3d 938, 952 (Fla. 2015); *see also Orme v. State*, 677 So. 2d 258, 262 (Fla. 1996) (noting a “strained reading of the evidence” cannot take the case from the jury). Here, the Third District required the State to rebut the defendant’s theory that the evidence showed the victim could have “simply moved elsewhere,” and her “alleged death” if it occurred, was “under other circumstances” (App. 19), but the trial evidence was inconsistent with that theory.

ARGUMENT

I. THE DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT’S DECISION IN *KNIGHT V. STATE*.

In *Knight*, this Court explained:

. . . we agree with the Fifth District that [the special standard] should not be applied based on any particular element of a crime being itself proven entirely by circumstantial evidence [because] the circumstantial evidence standard applies where the only *proof of guilt* is circumstantial . . . Thus, in determining whether the circumstantial evidence standard applies, the relevant evidence is that which points to the defendant as the perpetrator. Courts should ask whether the evidence *of that particular defendant's guilt* is entirely circumstantial, not whether all of the State's evidence of the crime is circumstantial.. .

Knight v. State, 186 So. 3d 1005, 1010 (Fla. 2016)(citations omitted); *see also Mosely v. State*, 46 So. 3d 510, 526 (Fla. 2009) (“If the State presents both direct and circumstantial evidence, courts do not apply the special standard. . . .”).

Here, the decision conflicts with *Knight* because the evidence of Mr. Garcia’s guilt of theft was not entirely circumstantial. The thefts – checks, online transfers, and ATM withdrawals – occurred over several days, around the time of victim’s disappearance. Under the theft statute, “[a]mounts of value of separate properties involved in thefts committed pursuant to one scheme or course of conduct . . . may be aggregated in determining the grade of the offense.” § 812.012(10)(c), Fla. Stat.; *Snyder v. State*, 715 So. 2d 367, 370 (Fla. 5th DCA 1998)(“consolidation of Snyder’s four thefts into one grand theft count was permissible under subsection 812.012(9)(c) [now 812.012(10)(c)]”); *State v. Barthell*, 554 So. 2d 17, 18 (Fla. 3d DCA 1989)(permitting separate takings charged as aggregate grand theft based on this provision). The State used the aggregate method here.

The Third District acknowledged direct evidence of theft, noting “surveillance videos, still pictures, and transaction records” evidencing unauthorized use of the victim’s ATM card to withdraw funds from her account twice, at different bank branches. (App. 16). It concluded the amount of those transfers was proven by direct evidence and the special circumstantial evidence test did not apply. (App. 16 n. 13). But then, the Third District concluded that the remaining thefts – online transfers totaling \$4700 (App. 13-14) and checks totaling \$40,000 (App. 13) were proven “entirely” by circumstantial evidence, even though the charge relied upon a single set of takings. (App. 17-18). Bank records revealed most of the victim’s bank account went to Mr. Garcia. (App. 4). Despite recognizing the State’s evidence included direct evidence, that court applied the circumstantial evidence test to each of Mr. Garcia’s takings separately. Based on *Knight*, there is conflict jurisdiction, since “the evidence tending to show that the defendant committed or participated in the crime” was not entirely circumstantial. *See Knight*, 186 So. 3d at 1005.

II. IF THE STATE’S CASE WAS ENTIRELY CIRCUMSTANTIAL, THERE IS CONFLICT WITH CASES APPLYING THAT TEST.
A. Reversing the grand theft conviction conflicts with this Court’s directive that the jury, not the court, assesses the hypothesis.

Even if the State’s proof of theft was entirely circumstantial, the lower court misapplied the rule that the jury decides between inconsistent views of the evidence. For example, the Third District noted the State’s evidence included one promissory

note, for half the amount of those checks, stating “[t]he forensic document examiner . . . examined the original, handwritten promissory note purportedly evidencing that Ms. Macriello owed \$ 20,000 to Mr. Garcia.” *Id.* It concluded “[t]he State presented no evidence that . . . Garcia somehow coerced Ms. Macriello into writing the two \$ 20,000 personal checks or the promissory note.” (App. 13, emphasis added).

Here, though, there was “direct evidence that Mr. Garcia had knowingly obtained Ms. Macriello's property – i.e., the \$ 1,000 he withdrew from the BOA ATMs” (App. 16). Despite this evidence, the Third District concluded, “[t]he State failed to present competent, substantial evidence that Mr. Garcia knowingly obtained Ms. Macriello's property (\$ 40,000) with the specific intent either to deprive Ms. Macriello of her right to the property or to appropriate the property to his own use.” (App. 13). But under this Court’s precedent, the jury could use his inconsistent statements to reject his claim that the victim’s money came to him legally. The opinion states, “Mr. Garcia did not tell the detective about a specific loan to Ms. Macriello where she had executed a promissory note memorializing a \$ 20,000 loan from him” and “Mr. Garcia denied having any access to, or taking any money from, Ms. Macriello's BOA accounts”, thus acknowledging the inconsistency. (App 6-7).

The Third District’s sufficiency determination triggered conflict jurisdiction. In *Bedford v. State*, 589 So. 2d 245, 250–51 (Fla. 1991), this Court said “[t]he circumstantial evidence rule does not require the jury to believe the defendant's

version of the facts when the State has produced conflicting evidence” and noted that “[b]ecause each of Bedford's several versions of events was inconsistent with the others, the jury reasonably could have concluded that each of these accounts was untrue” while adding that “[t]here was also other evidence which contradicted Bedford's story”. And, in *Finney v. State*, 660 So. 2d 674, 680 (Fla. 1995), this Court acknowledged inconsistent statements meet the State’s burden, concluding “[i]n light of Finney's inconsistent statements concerning his interactions with the victim and his activities on the day of the murder, the jury was free to reject Finney's version of events as unreasonable.” *See also Carpenter v. State*, 785 So. 2d 1182, 1195 (Fla. 2001)(noting, “In addition to the above evidence presented by the State . . . Carpenter's numerous statements to the police were inconsistent with one another” and “[i]n similar situations, we have routinely held that the jury was free to reject the defendant's version of the events”). The decision below conflicts with these.

Consequently, there is conflict jurisdiction, because “whether the evidence fails to exclude all reasonable hypotheses of innocence is for the jury to determine, and where there is substantial competent evidence to support the jury verdict, [the appellate court] will not reverse the jury verdict.” *Heiney v. State*, 447 So. 2d 210, 121 (Fla. 1984). *See also State v. Law*, 559 So. 2d 187, 190-91 (Fla. 1989) (reversing because the State met its burden); *Lincoln v. State*, 459 So. 2d 1030, 1031 (Fla. 1984) (concluding a dispute regarding driving the getaway car sufficed to meet the burden).

B. As to proof of murder, the court increased the State’s burden.

“The State is not required to rebut all possible hypotheses that could be inferred from the evidence” and “[i]nstead, it is required to present evidence that is inconsistent with the version of events given by the defendant during trial.” *Jackson v. State*, 180 So. 3d 938, 950 (Fla. 2015). In *Jackson*, “the jury [could] reject the [hypothesis] when presented with an alternate and inconsistent version of events” and “[t]his is [was] especially true because [of] Jackson[’s] inconsistent statements [about] his relationship with Pearce.” *Id.* The ruling below conflicted with this rule.

Here, the jury was free to reject Mr. Garcia’s explanation. The State met its burden with evidence of: the victim’s behavior, which was inconsistent with moving away without a trace; the links to Mr. Garcia, which were inconsistent with coincidence; and the absence of “other circumstances” relating to her disappearance, which coincided with substantial money transfers to him. The Third District expanded the State’s burden; a hypothesis is only reasonable where “[the defendant’s] theory of events is possible in th[e] case.” *Jackson*, 180 So. 3d at 952; *see also Orme*, 677 So. 2d at 262 (concluding the defendant’s hypothesis was a “strained reading of the evidence”).

CONCLUSION

Under Florida law, misapplication of this Court’s precedent supports conflict jurisdiction. Here, there is jurisdiction because the court below misapplied controlling case law to the facts of the case when reversing the jury’s verdict.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Jeffrey R. Geldens
JEFFREY R. GELDENS
Assistant Attorney General
Florida Bar No. 0673986
Attorney for Petitioner, State of Florida
Florida Office of the Attorney General
1SE 3rd Avenue, Suite 900
Miami, FL 33131
(305) 377-5441
(305) 377-5655 (Fax)
Primary: CrimAppMia@myfloridalegal.com
Secondary: jeffrey.geldens@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing (State of Florida's Brief on Jurisdiction) was sent to Respondent's counsel this 13th day of September, 2019.

/s/ Jeffrey R. Geldens
JEFFREY R. GELDENS

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Brief was typed using Times New Roman 14 point font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Jeffrey R. Geldens
JEFFREY R. GELDENS
Assistant Attorney General