

IN THE SUPREME COURT OF FLORIDA

REGINALD WINGFIELD, :
 Petitioner, :
vs. :
STATE OF FLORIDA, :
 Respondent. :
_____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

AMENDED
REPLY BRIEF OF PETITIONER ON THE MERITS

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STATEMENT REGARDING TYPE

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

Petitioner and Respondent are in general agreement as to the facts of the case.

ARGUMENT

ISSUE I: DID THE TRIAL COURT ERR IN FAILING TO GRANT A JUDGMENT OF ACQUITTAL AS TO BATTERY ON A LAW ENFORCEMENT OFFICER, WHERE THE LAW IS SUCH THAT THE EVIDENCE DOES NOT SUPPORT A CONVICTION? (CERTIFIED CONFLICT)

Petitioner relies upon all argument and law presented in his initial brief on the merits and replies to the State's answer as follows:

The essence of the State's argument is that Petitioner's truck struck the officer's car with "impact sufficient to cause \$1100 worth of damage to the truck and approximately \$1500 worth of damage to the police cruiser." (Answer p.12). However, Petitioner was not charged with damaging the truck, and the State failed to **prove** he caused \$1500 worth of damage to the police cruiser.

In its opinion which is before this Court, the Second District reversed Petitioner's conviction for felony misdemeanor and ordered it reduced to "second-degree misdemeanor criminal mischief." (Opinion p.4). Sect. 806.13 (b)1 indicates in pertinent part that if "the damage to such property is \$200 or less, it is a misdemeanor of the second degree. . . ." Thus, the State can only point to \$200 worth of damage to the police cruiser - it cannot argue what it has not proven. The State's argument that Petitioner must have battered the officers because of the amount of damage done to the patrol car is not well taken.

The State notes that the victim in Malczewski v. State, 444 So. 2d 1096 (Fla. 2d DCA) "was no more physically injured than the police officers were in the instant case." (Answer p.12). However,

Malczewski involved the stabbing of a money bag **held** by the victim - which is entirely different and a much more intimate contact than sitting in an automobile. The State's argument, carried to a reasonable extreme would imply that striking a car in the fender with one's fist, or spitting on the fender of the car are sufficient to establish battery on the persons inside. Such is not the case and should never be the case.

Simply striking another's car is not sufficient to constitute battery, and the State has pointed to no cases to support its position which do not have egregious circumstances compounding the striking of the car. There must be a line drawn, and that line should be drawn in this case: the impact must be enough to seriously jostle the victims within the car, there must be physical harm, or the circumstances surrounding the impact must be such that it rises above simply striking one car with another. Here, the facts of the case do not support such a conviction.

ISSUE II: DID THE TRIAL COURT AND THE SECOND DISTRICT COURT OF APPEAL ERR IN FAILING TO FIND SECTION 775.082(8), FLA. STAT. (1997), THE PRISON RELEASEE REOFFENDER ACT, UNCONSTITUTIONAL?

Petitioner and Respondent agree that this Court has jurisdiction to review this issue. Petitioner relies upon all argument and law presented in his initial brief on the merits and replies to the State's answer as follows:

The State did not address the trial court's comment, raised in the initial brief on the merits (p.35) that Petitioner's "sentence was being imposed 'by a court who has been told and believes that it has no choice in the sentence to be imposed.' (IVT.335)."

The trial court's comment indicates the trial court's belief that the Prison Releasee Reoffender Act violates separation of powers: it is now the prosecutor who decides who shall be so punished. This is a further indication that the act is unconstitutional on this, as well as the other grounds presented.

This court is asked to strike the act.

CONCLUSION

Petitioner, Reginald Wingfield, hereby requests this Court to reverse his two convictions of aggravated battery on law enforcement officers and vacate his sentences, and/or to rule Section 775.082(8), Fla. Stat. (1997) unconstitutional, and to vacate Appellant's sentences thereunder, remanding for imposition of proper guidelines sentences, and/or to grant any and all other relief which this Court may deem just and equitable.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Susan D. Dunlevy, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this _____ day of December, 2001.

Respectfully submitted,

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