

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED  
THOMAS D. HALL

MAY 25 2001

CLERK, SUPREME COURT

BY DJ

ANTHONY B. BOYKINS, )  
)  
Petitioner, )  
)  
vs. )  
)  
STATE OF FLORIDA, )  
)  
Respondent. )  
\_\_\_\_\_ )

S.Ct. Case No. SC01-1123

5th DCA Case No. 5D 00-1768

**ON DISCRETIONARY REVIEW FROM  
THE DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA,  
FIFTH DISTRICT**

**JURISDICTIONAL BRIEF OF PETITIONER**

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## STATEMENT OF THE CASE AND FACTS

Mr. Boykins was convicted of robbery with a firearm. On appeal, Mr. Boykins argued that the trial court erred when it denied his juror strike for cause for Ms. Diabari. The relevant facts of Mr. Boykins' case are set forth in the district court's opinion as follows:

During voir dire, Juror Diabari expressed doubt about her ability or willingness to withstand the views of the other jurors during deliberation:

[DEFENSE COUNSEL:] ...if you were selected to sit on this panel and you went back to deliberate after all of the evidence is in and you are asked to decide the facts of this case because that's your role and there were five votes against you, the other five felt strongly one way and you felt strongly the other way and you standing there alone with the greater number against you, would you give in to that greater number?

DIBARI: Unfortunately, I might give in.

[DEFENSE COUNSEL]: You think that you might?

DIBARI: Because we all see the same facts pretty much and I don't know what I could prove that would hold up against the other people.

Juror Diabari was challenged for cause based on her expressed misgivings about whether she would succumb to the will of the majority. The court denied the "for cause" challenge. *Boykins* used a peremptory to excuse her as the alternate juror and sought an additional peremptory.

On appeal, appellant relies on Shannon v. State, 770 So. 2d 714 (Fla. 4th DCA 2000). There, the court ordered a new trial where one juror said

during voir dire that he had previously sat on a jury where he had succumbed to pressure from other jurors and expressed an inability to maintain his view of the evidence if pressured by other jurors.

Despite the similarities, Shannon does not control the outcome of this case. The juror in Shannon was explicit about his weakness, his prior experience and previous failure to follow his oath. Ms. Diabari merely said that she might not be able to be persuasive and might give in to the reasoning of others since they were all privy to the same evidence. We note that Shannon cites no cases in support of its conclusion that a juror who cannot commit to withstand the reasoning of other jurors is subject to a challenge for cause. Section 913.03, Florida Statutes (1999) identifies twelve grounds for a challenge for cause. None of these statutory grounds applies to the facts before us. Accordingly, we find no error in failing to allow this challenge for cause.

**AFFIRMED**

Boykins v. State, 26 Fla. L. Weekly D946 (Fla. 5th DCA April 4, 2001). Mr.

Boykins timely filed a notice to invoke on May 14, 2001.

## **SUMMARY OF ARGUMENT**

When affirming Mr. Boykins's conviction, the Fifth District Court was in direct conflict with the Fourth District Court's decision in Shannon v. State, 770 So. 2d 714 (Fla. 4th DCA 2000), thereby permitting this Court to exercise discretionary review over the opinion below.

## ARGUMENT

### THE DISTRICT COURT'S OPINION CONFLICTS WITH THE OPINION FROM ANOTHER DISTRICT COURT ON THE SAME QUESTION OF LAW.

This Court has authority to exercise its discretionary review on any decision of a district court which expressly and directly conflicts with a decision of another district court on the same question of law. Art. V, § 3(b)(3), Florida Constitution. The conflict must be evident within the "four corners" of the decision below. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

The district court affirmed Mr. Boykins' conviction even though a juror, Ms. Diabari, doubted her individual ability to decide Mr. Boykins' case on the facts she heard. See Boykins v. State, 26 Fla. L. Weekly D946 (Fla. 5th DCA April 4, 2001). Because all the jurors hear the same facts, she did not know what she could prove to the other jurors that were in opposition of her independent decision. Ms. Diabari personally believed that she might give in to the other jurors even though she strongly believed otherwise.

The district court's opinion directly conflicts with Shannon v. State, 770 So. 2d 714 (Fla. 4th DCA 2000). In Shannon, the court held that the appellant's challenge for cause should have been granted when the juror doubted his ability to withstand the pressures from the other jurors in opposition of his independent

decision. Id. at 715-16. On a previous occasion that juror succumbed to the pressure from the opposing jurors despite his independent decision. Id.

The district court read Shannon too narrowly when it distinguished the facts in this case. In essence, the district court held that a prerequisite to a juror strike for cause is the prospective juror must first in another case have succumbed to the pressures of other jurors. If a juror expresses doubt that he or she has the ability to stand up to the pressure of others and will succumb to pressure despite reasonably believing facts to be otherwise, a reasonable doubt exists as to that juror's ability to be fair and impartial. See Kessler v. State, 752 So. 2d 545, 550 (Fla. 1999) ("The juror should be excused if there is any reasonable doubt about the juror's ability to render an impartial verdict.") (citing Turner v. State, 645 So.2d 444, 447 (Fla.1994)); See also Singer v. State, 109 So. 2d 7 (Fla. 1959).

The district court stated that Section 913.03, Florida Statutes (1999) identifies twelve grounds for a challenge for cause and recognized that none of the statutory grounds applied to Mr. Boykins' case. See Boykins. The district court's decision that the list in Section 913.03 is exhaustive is in direct conflict with Shannon. Although Section 913.03 list reasons that a juror may be stricken for cause, there certainly are other situations, as in this case, where a strike for cause is paramount to ensure that justice is served. The defendant is entitled to have a jury consisting of



six independent jurors who decide the defendant's fate on the evidence produced at trial. The Shannon court recognized this and decided that the list in Section 913.03 was not conclusive as evident from its holding. The District Court's opinion herein is in direct conflict with Shannon. Thus, this Court should exercise its discretion and accept the instant case for review to resolve the conflict.


**CONCLUSION**

BASED ON THE foregoing arguments and authorities cited herein, Mr. Boykins respectfully requests that this Honorable Court grant review on the district court's opinion below.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Anthony B. Boykins, DC# 899339, Hamilton Correctional Institution, 10650 SW 46<sup>th</sup> Street, Jasper, Florida 32052, on this 24<sup>th</sup> day of May, 2001.

Michael S. Becker  
For:

  
LINDA L. GAUSTAD  
ASSISTANT PUBLIC DEFENDER

**CERTIFICATE OF FONT**

I HEREBY certify that the size and style of type used in this brief is proportionally spaced 14 pt. Times New Roman.

Michael S. Becker  
For:

  
LINDA L. GAUSTAD  
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

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5th DCA Case No. 5D 00-1768

**APPENDIX**

05-868  
LG

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2001

NOT FINAL UNTIL THE TIME EXPIRES  
TO FILE REHEARING MOTION, AND,  
IF FILED, DISPOSED OF.

ANTHONY B. BOYKINS,

Appellant,

v.

CASE NO. 5D00-1768

STATE OF FLORIDA,

Appellee.

APR 06 2001

Opinion Filed April 6, 2001

Appeal from the Circuit Court  
for Seminole County,  
Nancy F. Alley, Judge.

PUBLIC DEFENDER'S OFFICE  
DISTRICT COURT, 5TH DISTRICT

James B. Gibson, Public Defender, and  
Linda L. Gaustad, Assistant Public Defender,  
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,  
Tallahassee, and Pamela J. Koller, Assistant  
Attorney General, Daytona Beach, for Appellee.

GRIFFIN, J.

The defendant below, Anthony B. Boykins ["Boykins"], was convicted of robbery with a firearm. He seeks a new trial, asserting that the trial court erred in refusing to strike four jurors for cause, in limiting the scope of cross-examination of a witness and in failing to grant a mistrial based on prosecutorial misconduct during closing argument. We find no reversible error, but we believe that one claim warrants discussion.

During voir dire, Juror Dibari expressed doubt about her ability or willingness to withstand the views of the other jurors during deliberation:

[DEFENSE COUNSEL:] ... if you were selected to sit on this panel and went back to deliberate after all of the evidence is in and you are asked to decide the facts of this case because that's your role and there were five votes against you, the other five felt strongly one way and you felt strongly the other way and you standing there alone with the greater number against you, would you give in to that greater number?

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On appeal, appellant relies on *Shannon v. State*, 770 So. 2d 714 (Fla. 4th DCA 2000). There, the court ordered a new trial where one juror said during voir dire that he had previously sat on a jury where he had succumbed to pressure from other jurors and expressed an inability to maintain his view of the evidence if pressured by other jurors.

Despite the similarities, *Shannon* does not control the outcome of this case. The juror in *Shannon* was explicit about his weakness, his prior experience and previous failure to follow his oath. Ms. Dibari merely said that she might not be able to be persuasive and might give in to the reasoning of others since they all were privy to the same evidence. We note that *Shannon* cites no cases in support of its conclusion that a juror who cannot commit to withstand the reasoning of other jurors is subject to a challenge for cause. Section 913.03, Florida Statutes (1999) identifies twelve grounds for a challenge for cause.

None of these statutory grounds applies to the facts before us. Accordingly, we find no error in failing to allow this challenge for cause.

AFFIRMED.

PETERSON and ORFINGER, R. B., JJ., concur.