

IN THE SUPREME COURT OF FLORIDA

Case No. SC01-2315

DEANDRE BAKER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY BRIEF

**ON CERTIFIED CONFLICT FROM
THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT**

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REPLY ARGUMENT

Jurisdiction

The Court has jurisdiction over this case because the Fourth District certified conflict between *Baker v. State*, 793 So. 2d 69 (Fla. 4th DCA 2001), and *Lester v. State*, 737 So. 2d 1149 (Fla. 2d DCA 1999). See *State v. Warren*, 559 So. 2d 1139, 1139 (Fla. 1990) (Court had jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution, because district court's decision certified conflict with decision of another district court); *Alvarez v. Allstate Ins. Co.*, 439 So. 2d 1386, 1386 (Fla. 1983) (same); Art. V, Section 3(b)(4), Fla. Const.

What's more, the conflict is express and direct (the very reason conflict was certified). *Baker* and *Lester* cannot be reconciled in any way, at least when it comes to the issue surrounding the theft of an *already*-stolen car. Under the rule in *Lester v. State*, the second theft is ignored — it does not count for anything and can *never* give rise to felony murder. Under *Baker v. State*, the second theft constitutes an independent theft — it *does* count and *does* give rise to felony murder. Those absolutely contrary rules cannot be squared, and this Court should settle the difference.

But the Court should not stop there. It has jurisdiction over all issues in the case. That means it has jurisdiction to decide whether Deandre Baker could ever have

been convicted of felony murder — the central issue in the case. The State does not disagree that Baker would be entitled to complete relief — post-conviction and otherwise — if he can show that the record does not support a felony murder conviction (A4-7). The point has now been fully briefed, and the Court should decide it. *Hall v. State*, 752 So. 2d 575, 577 n.2 (Fla. 2000) (once Court has jurisdiction, it has jurisdiction over all issues in the case); *Feller v. State*, 637 So. 2d 911, 914 (Fla. 1994) (same); *Jacobson v. State*, 476 So. 2d 1282, 1285 (Fla. 1985) (same).

No Felony Murder

The State agrees that after Baker took control of the truck, he was never in flight. From the moment of the taking, he was temporarily safe from pursuit and capture; his possession of the truck was not being challenged in any way and there was nothing more he needed to do to steal the property. Thus according to the settled law, Baker's theft was complete and did not continue forward. Anything that happened *later* — after the perpetration — could not be felony murder. *Compare Allen v. State*, 690 So. 2d 1332, 1333-35 (Fla. 2d DCA 1997) (felony was complete when felon took control of car without flight or chase; death occurring later, no matter how close in time, could not be felony murder); *State v. Williams*, 776 So. 2d 1066, 1071-72 (Fla. 4th DCA 2001) (when no flight, felon is at temporary safe spot, and felony is complete; death occurring later is not felony murder); *and People v. Salas*,

103 Cal. Rptr. 431, 438 (Cal. 1972) (when felon is no longer trying to escape immediate pursuit and challenge he is at a place of temporary safety and felony is complete); *with Ray v. State*, 755 So. 2d 604, 609 (Fla. 2000) (felony continues during flight from crime scene; defendants were in process of making their escape and were in flight when death occurred); *and Griffin v. State*, 639 So. 2d 966, 971 (Fla. 1994) (felony continues during flight and attempt to evade police pursuit, but is complete at first point of temporary safety; killing occurred during flight); *see also* Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 7.5, at 224-25 & n.99 (1986) (most important factor in determining whether felony has been completed is whether felon is being pursued and chased, or instead, whether felon has reached temporary safety).¹

Keeping with these consistent authorities, Baker's theft was complete and did not continue any farther than the point where he took the truck. Nor could the theft

¹ Florida courts have construed narrowly the period during which a grand theft is being perpetrated in the context of felony murder. The theft is not a continuing crime, and is complete as soon as the defendant has taken possession of the property and is temporarily safe from any challenge or resistance to the taking. This is the cut-off point for the theft – it does not continue forward. A death that occurs later, no matter how close in time, cannot be felony murder. *Allen v. State*, 690 So. 2d at 1334-35 (construing narrowly the period of time during which grand theft is being perpetrated); *State v. Williams*, 776 So. 2d at 1070 (grand theft is not a continuing crime in context of felony murder); *cf. State v. Diaz*, 814 So. 2d 466, 467 (Fla. 3d DCA 2002) (grand theft is not a continuing crime for purposes of statute of limitation); *O'Malley v. Mounts*, 590 So. 2d 437, 438-39 (Fla. 4th DCA 1991) (same).

have continued farther than the place where Baker dropped his friend home. "My friend went in, [I] dropped him off at home" (35). Baker remained safe from pursuit and arrest during that entire time, and was never in flight (A33-35, 37, 60-63). There was no challenge or resistance to the taking of the truck. Thus his theft was complete. The ensuing death, then, occurred *after* the perpetration of the theft — not during — and could not be felony murder. *Allen v. State*, 690 So. 2d at 1333-35; *see also* Section 782.04(4), Fla. Stat. (1998) (for felony murder to apply, killing must occur during "perpetration" of the felony); *State v. Williams*, 776 So. 2d at 1070 (if felony murder statute can reasonably be construed in favor of the accused, a court must do so).

For its part, the State says Baker's theft continued indefinitely because Baker was a juvenile (and too young to drive). Yet the State charged Baker as an adult, *not* as a juvenile (A9-10). The court ruled he was an adult, with the requisite sophistication and maturity, and convicted him as an adult (A39-41). And holding him to that standard, his theft was complete as early as the taking of the truck, and surely no later than when he dropped his friend home (A35, 60). He remained safe from pursuit and capture the whole time. And he had done everything necessary to steal the property. There was no challenge or resistance to his possession; thus the felony was complete and did not continue forward. *Allen v. State*, 690 So. 2d at 1333-35.

The State says nothing to distinguish *Allen v. State*. There, it did not matter, at least not for felony murder, that Dale Allen had no license to drive.² Allen's temporary safety from pursuit and arrest — the absence of any flight or challenge to his possession — made his *theft* of the car complete. Anything that happened later, no matter how close in time, could not be felony murder. *Allen v. State*, 690 So. 2d at 1333-35.

Finally, the State overlooked Baker's argument on causation. As we explained in the initial brief, the felony did not itself cause the accident. John Hall was speeding and Baker could not avoid him (A27-30, 60). Baker panicked because of Hall's speed — *not* because he was in a stolen truck. It was the speed that dictated Baker's reaction, not the felony. Thus the felony was not the immediate and proximate cause of death. For this reason too, there was no felony murder. *Allen*, 690 So. 2d at 1333-35; *see also* LaFave & Scott, *Substantive Criminal Law* § 7.5 at 227 (causation for felony murder depends on whether felony dictated the conduct that caused the death).

² The State observes that Baker was a juvenile with no license to drive. But the lack of any license was not a basis for the felony murder charge or conviction (A9, 20, 51).

CONCLUSION

For the reasons stated and upon the authorities cited — both in this brief and our initial brief — the Court should quash the decision of the Fourth District with directions that the cause be remanded so that Baker's guilty plea and conviction may be set aside.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this reply brief was mailed on July 22, 2002 to Celia Terenzio, Counsel for the State of Florida, 1655 Palm Beach Lakes Blvd., Suite 300, West Palm Beach, Florida 33401-2299 and Karen Finkle, Assistant Attorney General, 1515 N. Flagler Drive, 9th Floor, West Palm Beach, FL 33401-3432.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements set forth in Rule 9.210 of the Florida Rules of Appellate Procedure because it has been prepared in Times New Roman 14-point font.

Christopher N. Bellows