IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO.: SC02-2193
DCA case no.: 5D01-1913

DANIEL BURRIS,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The fact that a robbery was committed by the Respondent in this case is undisputed. The only issue is whether an automobile can qualify as a deadly weapon under the robbery statute. It is the State's position that such an interpretation of the robbery statute clearly reflects the legislature's intent to increase the possible punishment for those who use a deadly weapon like a vehicle to help them commit their crime.

ARGUMENT

POINT OF LAW

WHETHER AN AUTOMOBILE WHEN FOUND TO HAVE BEEN USED AS A DEADLY WEAPON BY THE JURY QUALIFIES AS SUCH UNDER THE ROBBERY STATUTE.

It is undisputed that a vehicle can be a weapon. It is not even disputed that the car in this case was used in manner which increased the victim's injuries. The argument by the Defendant is that an automobile as a matter of law can never be used as a weapon under the robbery statute based upon the statute's use of the word "carry." It is the State's position that such an interpretation of the robbery statute clearly is inconsistent with the Legislature's intent to increase the possible punishment for those who use a deadly weapon like a vehicle to help them commit their robberies. As noted in the Petitioner's initial brief, the standard jury instructions for robbery define "deadly weapon" as a weapon which is used or threatened to be used in a way likely to produce death or great bodily harm. This definition complies with this Court's case of Houck v. State, 652 So. 2d 359, 360 (Fla. 1995), in which this Court wrote that a weapon was an "instrument of attack…" or "a means used to … defeat another." The jury in this case found that the car was so used by the Defendant.

The defense's argument is that a car can not be carried and does not qualify as a weapon regardless of how it was used. When determining the meaning of a word within a statute, courts

must attempt to discern the Legislature's intent. The United States Supreme Court has noted that during this process "[w]e consider not only the bare meaning of the critical word or phrase but also its placement and purpose in the statutory scheme." Holloway v. United States, 526 U.S. 1 (1999), quoting, Bailey v. United States, 516 U.S. 137, 145 (1995) ('[T]he meaning of statutory language, plain or not, depends on context.'[1]).

Robbery in and of itself is a serious crime which the Legislature has defined as a second degree felony punishable by up to fifteen years imprisonment. See section 812.13(2)(c), Fla. Stat. (2001). The Legislature determined that carrying a weapon increases the offense to a first degree felony and carrying a deadly weapon increasing robbery to a first degree felony punishable by life in prison. See section 812.13(2)(a)(b), Fla. Stat. (2001). The jury instructions for robbery which took into account the purpose of the word "carry" and its place within the statutory scheme defined weapon and deadly weapon based upon their use during the robbery. Such application of carrying a weapon would seem to be a fair reflection of the Legislature's intent to enhance the possible sentences within the robbery statute.

To counter this commonsense interpretation of the statute, the defense in its brief cited from a dissenting opinion in the

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[1] Citations have been omitted.

Fifth District Court of Appeal case of Jenkins v. State, 747 So. 2d 997 (Fla. 5th DCA 1999).[2] This dissent submitted that the Legislature had limited the term "weapon" to those objects set out in Chapter 790. Id. at 1000-1001. The dissenting opinion continued that the Legislature in Chapter 790 had "banned all but the most exotic possibilities - planes, trains, and automobiles" and that the Legislature intended that same limited definition to apply to weapons in the robbery statute. The State does not agree that the Legislature intended to exclude these potentially very dangerous items when they are used as weapons.

The State is fully aware that automobiles more typically are used to transport defendants rather than to injury victims. However, under the limited definition that would apply under the defense's argument, a bicycle if used to run over a victim and which injured that victim during a robbery would not qualify as a weapon; whereas, if a defendant picked it up and hit or threatened a victim with the bicycle it would so qualify because it was being "carried." Such a strained interpretation was not what the Legislature intended.

As to the rule of lenity, the United States Supreme Court

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[2] This Court had originally granted review in the Jenkins case based upon an argument that it was in conflict with Houck; however, the review was dismissed as being improvidently granted. See Jenkins v. State, 781 So. 2d 1083 (Fla. 2001).

has held that it only applies "[i]f, after seizing everything from which aid can be derived, ... we can make no more than a guess as to what Congress intended." Holloway, 119 S. Ct. at 972, n. 14. Section 775.021(1), Fla. Stat. (2001), also specifically provides that it is only applicable when the language is "susceptible of differing constructions" and, it is the position of the State that the Legislature's intent in this case was clear. Using a weapon to injure a victim during a robbery should subject the defendant to an enhanced possible sentence.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court reverse the decision of the Fifth District Court of Appeal and reinstate the decision of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Merits Brief has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to Thomas J. Lukashow, counsel for the Respondent, 112 Orange Ave. Ste. A., Daytona Beach, FL 32114, this _____ day of February 2003.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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