

IN THE SUPREME COURT OF FLORIDA

STEVEN DOUGLAS HAYWARD,)
)
 Appellant,)
)
v.) CASE NO. SC07-1234
)
STATE OF FLORIDA,)
)
 Appellee.)

)

SUPPLEMENTAL INITIAL BRIEF OF APPELLANT

On Appeal from the Circuit Court
Of Nineteenth the Judicial Circuit
In and For St. Lucie County, Florida

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STATEMENT OF THE CASE AND FACTS

Appellant relies on the statement in his initial brief.

SUMMARY OF THE ARGUMENT

The state did not prove that appellant committed a robbery. It did not disprove the defense theory that another person robbed Daniel Destefano and appellant committed theft by taking the gun that fell to the ground at the time of the robbery. Also the state did not prove that appellant stole money from Destefano.

ARGUMENT

WHETHER THE STATE PROVED THAT APPELLANT ROBBED DESTEFANO.

The state charged appellant with armed robbery of Daniel Destefano. R1 4. Robbery is a theft committed by use of force, violence, assault, or putting in fear. See Kinsler v. State, 873 So.2d 551 (Fla. 5th DCA 2004). In Kinsler, the defendant murdered the victim and then stole his car and money. Kinsler contended at his trial that he shot the victim by accident and stole his car and money as an afterthought. The Fifth District held that the state did not disprove the defense theory that Kinsler committed the theft as an afterthought. See also Clark v. State, 609 So.2d 513, 515 (Fla.1992) (robbery felony murder aggravator struck where taking was afterthought to murder).

At bar, appellant contended that he took Destefano's property after someone else shot him. The state did not disprove this contention, and hence, this Court should reduce the conviction to one for theft. Since the judge gave "great weight" to the robbery felony murder circumstance (merged with pecuniary gain), this Court

should also order resentencing.

Also, the state did not prove that appellant stole money from Destefano. Ms. Edwards testified on direct examination (R24 1461):

Q Okay. Did he -- did you know him ever to carry any personal cash with him when he went out on these paper deliveries?

A Very little.

Q As little as maybe \$10?

A Yeah, little.

Thus, she said that, on some unspecified occasion, he carried very little money when making deliveries. The \$10 figure came from the prosecutor and Edwards only vaguely confirmed that it was maybe as little as \$10. She did not say that he usually carried only ten dollars, much less on the day of the murder. The fact that appellant later had a bloody ten dollar bill did not show that appellant stole the bill from Destefano. The state did not disprove the defense hypothesis that appellant was bleeding because the gun shot him in the hand when it fell while he was picking it up from the ground. Since appellant was bleeding, it was hardly surprising or probative that money that he handled would have blood on it.

The Due Process Clauses of the state and federal constitutions forbid conviction where the evidence is insufficient, and the Cruel and Unusual Punishment Clauses of the state and federal constitutions impose a heightened standard of due process in death penalty cases. Amend. VIII, XIV, U.S. Const.; Art. I, §§ 9, 17, Fla.Const.

At bar, the state's circumstantial case did not overcome the defense hypothesis, and this Court should reverse his conviction and sentence.

CONCLUSION

Appellant respectfully submits this Court should vacate the conviction and sentence for robbery and reverse the death sentence because of use of the robbery felony murder aggravator, and remand to the trial court for further proceedings, or grant such other relief as may be appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Supplemental Initial Brief has been furnished by courier to Leslie Campbell, Esq., Counsel for Appellee, Assistant Attorney General, Counsel for Appellee, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401-3432, on 10 September 2008.

Attorney for Steven Douglas Hayward

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY the instant brief has been prepared with 12 point Courier, a font that is not spaced proportionately.

Attorney for Steven Douglas Hayward

