

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1338

DCA NO. 3D09-122

AHMAD MILTON,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

Respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and the Appellee in the District Court of Appeal, Third District. Petitioner, AHMAD MILTON, was the Defendant in the trial court and the Appellant in the District Court of Appeal. In this brief, Petitioner will be referred to as MCLIN and the Respondent will referred to as the State.

STATEMENT OF THE CASE AND FACTS

Upon rehearing, on June 1, 2011, the lower court affirmed Petitioner's convictions of attempted felony murder, with attempted second degree murder as the predicate felony offense and shooting at a dwelling. Milton v. State, --- So.3d ----, 2011 WL 2138161 (Fla.App. 3 Dist.).

In doing so, the court distinguished Coicou v. State, 867 So.2d 409 (Fla. 3d DCA 2003), quashed on other grounds, 39 So.3d 237 (Fla.2010), because Coicou involved multiple offenses which were alleged to have been committed on a single victim. However, the instant case involved multiple victims. The lower court also noted that Tucker v. State, 857 So.2d 978 (Fla. 4th DCA 2003), held that double jeopardy was violated because the charges were directed at the same victim. Id. at 979. In the subject case,

the facts indicated there were multiple victims, and Petitioner was not shooting specifically at one person.

The opinion held that Brinson v. State, 18 So.3d 1075 (Fla. 2d DCA 2009) applies to the subject case. In Brinson, the defendant was charged with first-degree murder and a predicate felony of attempted first-degree murder and attempted second-degree murder. Id. at 1076. The court in Brinson held that the defendant's convictions for attempted second-degree murder and felony murder did not violate protection against double jeopardy because the convictions did not doubly punish the defendant for a single homicide. Id. at 1078.

QUESTIONS PRESENTED

WHETHER THE DECISION OF THE LOWER COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE SECOND DISTRICT DECISION OF Brinson v. State, 18 So.3d 1075 (Fla. 2d DCA 2009); THE FOURTH DISTRICT DECISION OF Tucker v. State, 857 So.2d 978 (Fla. 4th DCA 2003) and THE THIRD DISTRICT DECISION OF Coicou v. State, 867 So. 2d 409 (Fla. 3d DCA 2003)? (REPHRASED).

SUMMARY OF THE ARGUMENT

The grounds set forth in McLin's brief do not provide the Supreme Court of Florida with jurisdiction to review the Third District Court of Appeal's decision. The lower court's opinion does not expressly and directly conflict with the decisions of Brinson v. State, 18 So.3d 1075 (Fla. 2d DCA 2009); Tucker v. State, 857 So.2d 978 (Fla. 4th DCA 2003) and Coicou v. State, 867 So. 2d 409 (Fla. 3d DCA 2003), as the subject case involved multiple offenses and multiple victims.

ARGUMENT

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE SECOND DISTRICT DECISION OF Brinson v. State, 18 So.3d 1075 (Fla. 2d DCA 2009); THE FOURTH DISTRICT DECISION OF Tucker v. State, 857 So.2d 978 (Fla. 4th DCA 2003) and THE THIRD DISTRICT DECISION OF Coicou v. State, 867 So. 2d 409 (Fla. 3d DCA 2003).(REPHRASED).

Petitioner claims that the Court has jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., which provides for this Court's discretionary review of decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law. The Court has explained express and direct conflict as appearing within the four corners of the majority decision. Reaves v. State, 485 So.2d 829 (Fla. 1986). The State maintains that the Court is without jurisdiction to review this decision on the grounds set forth in Petitioner's brief, as no such express and direct conflict exists.

In support of his claim of jurisdiction, as set forth in his first argument, Petitioner argues that the lower court's opinion is in conflict with Brinson v. State, 18 So.3d 1075 (Fla. 2d DCA 2009); Tucker v. State, 857 So.2d 978 (Fla. 4th DCA 2003) and Coicou v. State, 867 So. 2d 409 (Fla. 3d DCA 2003).

As set forth in the lower court's opinion, Tucker and Coicou, contain a significant distinction from the case at bar, as they both contained multiple offenses and a *single* victim. The subject case contains multiple victims, thereby alleviating the basis for reversal which existed in Coicou and Tucker.

Petitioner attempts to argue that the felony murder state requires the occurrence of an act that is not an essential element of the underlying felony and that no such act is present in the instant case. In support of his argument, Petitioner refers to the content of the charging document and attempts to distinguish Brinson based on same. However, the contents of the charging document is not referred to or contained in the opinion below. Thus, Petitioner's brief improperly contains and argues facts that are not contained within the four corners of the lower court's opinion. When preparing a jurisdictional brief based on alleged decisional conflict, the only relevant facts are those facts contained within the four corners of the decisions allegedly in conflict. The Court is not permitted to base conflict jurisdiction on a review of the record. Reaves. Accordingly, this Court has specifically stated that "it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record". Reaves at 830, footnote 3.

As to the second argument, Petitioner again refers to the contents of the charging document and argues that the information failed to specifically allege what criminal offense Petitioner committed as the predicate felony. In addition to the content of the charging document not being set forth in the opinion, the opinion does not address the issue of whether the predicate offense was properly charged. Thus, the issue improperly contains and argues facts that are not contained within the four corners of the lower court's opinion and cannot be the basis for conflict jurisdiction. Reaves.

CONCLUSION

As indicated by the foregoing facts, authorities and reasoning, the Third District's opinion does not directly and expressly conflict with Brinson; Tucker or Coicou. Thus, the State respectfully maintains that this Court lacks jurisdiction and the petition to invoke discretionary jurisdiction should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent On Jurisdiction was mailed to Ahmad R. Milton, DC#M24080, Okeechobee Correctional Institution, 3420 N.E. 168th Street, Okeechobee, Florida 34972 on this 28th day of September, 2011.

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CERTIFICATION OF TYPE SIZE AND STYLE

Pursuant to the Rule 9.210(a)(2), Fla. R. App. P. regarding the type size of briefs filed in the Supreme Court of Florida, Respondent hereby certifies that the subject brief was typed in font Courier New, 12 point.

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