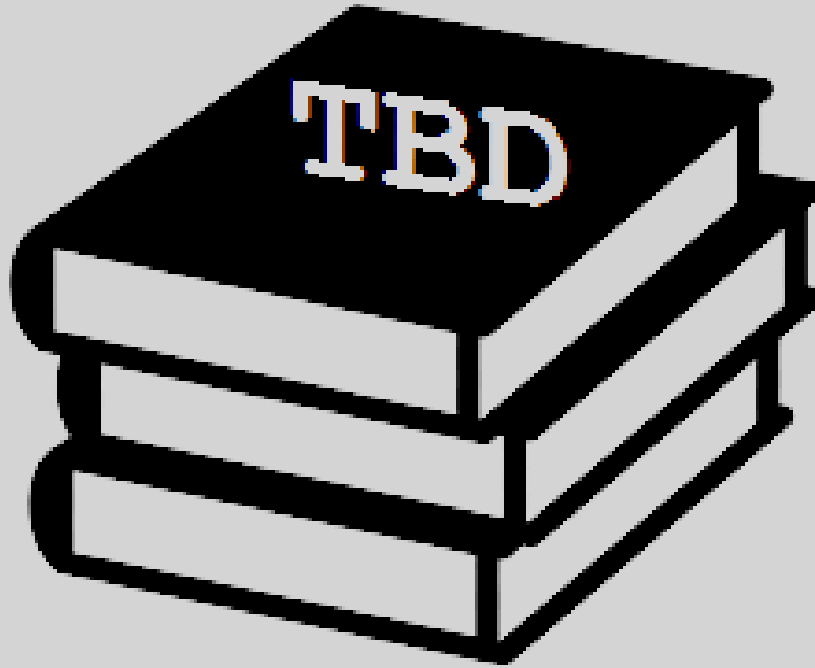


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IN THE SUPREME COURT OF FLORIDA

MALIK JIMER WILLIAMS,  
Petitioner,

Case No. SC16-2170

v.

L.T. Nos. 2D14-1732

STATE OF FLORIDA,  
Respondent.

292013CF003404000AHC

\_\_\_\_\_ /

PETITIONER'S MOTION FOR REHEARING

COMES NOW Petitioner Malik Jimer Williams (hereinafter the “Defendant”), by and through the undersigned attorney pursuant to Fla. R. App. P. 9.330, and moves for rehearing in this case because this Court overlooked a critical portion of the record on appeal, and in support thereof would state:

Summary

This Court issued its opinion in this case on 19 April 2018 (hereinafter the “slip opinion”). This Court affirmed the decision of the Second District Court of Appeal in part and remanded the case for resentencing. The instant motion addresses the portion of the opinion of this Court affirming the denial of the Defendant’s motion for judgment of acquittal by the trial court.

This Court held that “because the evidence was equivocal and ultimately was a credibility determination between [prosecution witness] Johnson and

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[Defendant] Williams, the trial court properly denied the judgment of acquittal *before the jury entered its verdict.*” Slip opinion at 10 (emphasis added).

However this Court overlooked the critical fact that the trial court ultimately denied that motion for judgment of acquittal long after the jury entered its verdict.

This Court held that when the jury entered its verdict “it became apparent that the jury did not believe there was a robbery attempt because they found Williams [the Defendant] guilty of the lesser included offense of theft based on [co-defendant] Felton’s taking of Brown’s bike after his death.” Slip opinion at 10, n.3. When the trial court ultimately denied the Defendant’s renewed motion for judgment of acquittal, it had the benefit of that jury verdict. Therefore the Defendant’s defense of self-defense was proper because the jury concluded that the Defendant did not commit robbery, and no record evidence substantiated any other criminal act by the Defendant.

#### Record Facts and Prior Proceedings

In the instant appeal the Defendant argued that the denial of his motion for judgment of acquittal by the trial court was error because he had presented a prima facie case of self-defense and the State failed to present evidence to refute his defense beyond a reasonable doubt. This Court held:

Williams’ self-defense theory was only applicable if the jury did not find that the altercation began because of a

robbery attempt. Accordingly, because the evidence was equivocal and ultimately was a credibility determination between Johnson and Williams, the trial court properly denied the judgment of acquittal *before the jury entered its verdict*.<sup>3</sup>

<sup>3</sup>Williams moved for a new trial based on the trial court's ruling to limit his cross-examination of Johnson. Counsel did not move for a new trial based on the jury's inconsistent verdict once it became apparent that *the jury did not believe there was a robbery attempt because they found Williams guilty of the lesser included offense of theft based on Felton's taking of Brown's bike after his death*.

Williams v. State, No. SC16-2170 (Fla. Apr. 19, 2108), slip opinion at 10 (footnote as in original, emphasis added).

This Court addressed the Defendant's motion for a new trial. Slip opinion at 10, n.3. However, when this Court held that "the trial court properly denied the judgment of acquittal before the jury entered its verdict", this Court apparently overlooked the fact that the Defendant renewed his motion for a judgment of acquittal by written motion after the jury entered its verdict. R.255-257. This Court may have overlooked that renewed motion because the pages are out of order in the record on appeal. The first and second pages of the Defendant's renewed motion for judgment of acquittal are pages 256 and 257 of the record. The third and final page of that motion is page 255 of the record.

In the Defendant's renewed motion for judgment of acquittal, the Defendant raised exactly the issue addressed in the instant appeal:

The burden of proving guilt beyond a reasonable doubt never shifts from the state, and such standard broadly includes the requirement that the state prove beyond a reasonable doubt that the defendant did not act in self-defense. If a defendant establishes a prima facie case of self defense, the state must overcome the defense by rebuttal, or by inference in its case-in-chief. *If the state fails to sustain its burden of disproving defense of self-defense, the trial court is duty bound to grant a judgment of acquittal in favor of the defendant.* Jenkins v. State, 942 So.2d 910 (Fla. 2nd DCA 2006). The state must disprove, beyond a reasonable doubt, a defense of self-defense. Sneed v. State, 580 So.2d 169 (Fla. 4th DCA 1991)[.]

R.257 and 255 (emphasis added).

The Defendant's renewed motion for judgment of acquittal was filed on 27 December 2013. R.256. On 08 January 2014 the trial court entered an "Interim Order" providing: "Defense counsels [*sic*] filed a renewed motion for judgment of acquittal and a motion for new trial, which the Court will consider on 31 January 2014." R.258. Fla. R. Crim. P. provides that a motion for judgment of acquittal "may be made or renewed within 10 days after the reception of a verdict and the jury is discharged *or such further time as the court may allow*" (emphasis added). The trial court specifically ruled the Defendant's motion was timely. R.293. In its 08 January 2014 "Interim Order" the court directed the State to file any argument

or authority in opposition by a date certain, directed the Defendant to file any reply by another date certain, and set the time when the court would rule on the motion. R.258. The court declined to allow oral argument. R.258.

As provided by the order of the trial court, the State filed a written response and the Defendant filed a written reply. R.260-64; R.265-71. The trial court subsequently entered an order denying the Defendant's renewed motion for judgment of acquittal. R.293-95.

The jury verdict in this case was returned on 13 December 2013. R.248-50. The trial court entered the order denying the Defendant's renewed motion for judgment of acquittal on 20 February 2014. R.293-95. Clearly the parties and the trial court were all aware of the jury verdict on the robbery count long before the trial court ruled on the Defendant's renewed motion for judgment of acquittal. The trial court memorialized that fact in its "Interim Order" on the Defendant's renewed motion for judgment of acquittal entered 08 January 2014 where the trial court recited that the Defendant had been convicted of "petit theft (lesser of firearm robbery)". R.258.

#### This Court Apparently Misapprehended the Facts in the Record

This Court held that theory of self-defense asserted by the Defendant "was only applicable if the jury did not find that the altercation began because of a

robbery attempt.” Slip opinion at 10. That was exactly what the jury found – no robbery or attempt. On the charge of robbery, the jury returned a verdict of guilty of the lesser included offense of petit theft. R.1534, lines 13-15; R.249. The trial court adjudicated the Defendant guilty of petit theft. R.1539, lines 13-15; R.350.

Immediately after the close of evidence, the Defendant moved ore tenus for a judgment of acquittal as provided by Fla. R. Crim. P. 3.380. R.1384, lines 3-23. The trial court promptly denied that ore tenus motion. R.1386, lines 1-2. The trial court predicated its ruling on that motion on a finding that the Defendant had been about to commit a robbery. R.1385, lines 15-23.

The record is absolutely clear that at the time the trial court made that ruling on the Defendant’s ore tenus motion, the court did not have the benefit of the jury verdict. The court scheduled the parties’ closing arguments for the following day. R.1386, lines 16-17. The verdict was not returned until later that following day, after closing arguments. R.1533, line 17 - R.1534, line 24.

Therefore this Court must reconsider its opinion. Apparently this Court based its opinion on the ore tenus order of the trial court denying the Defendant’s judgment of acquittal at the close of all evidence but before the jury returned its verdict. This Court held that the Defendant’s “self-defense theory was only applicable if the jury did not find that the altercation began because of a robbery

attempt” and “the trial court properly denied the judgment of acquittal before the jury entered its verdict.” Slip opinion at 10.

However the order which is the basis for this appeal was not the ore tenus order of the trial court entered “before the jury entered its verdict.” The order which was the basis for this appeal was entered ten weeks later, on 20 February 2014. R.293-95. At the time the trial court entered that order denying the Defendant’s renewed motion for judgment of acquittal, the trial court was well aware that the Defendant had not been convicted of the robbery of Brown which was charged in the indictment. Therefore the denial of the Defendant’s renewed motion for judgment of acquittal was error because, as the Defendant argued in his renewed motion for judgment of acquittal, if the state fails to sustain its burden of disproving defense of self-defense, the trial court is duty bound to grant a judgment of acquittal in favor of the defendant. R.257 and 255.

This Court held that the Defendant’s “self-defense theory was only applicable if the jury did not find that the altercation began because of a robbery attempt.” Slip opinion at 10. That is exactly what happened. The jury found no robbery or attempt. This Court recognized that the jury “found Williams guilty of the lesser included offense of theft based on Felton’s taking of Brown’s bike after his death.” Slip opinion at 10, n.3. This Court acknowledged that Felton’s criminal act of taking Brown’s bicycle occurred after the Defendant shot Brown.



This Court held that “because the evidence was equivocal and ultimately was a credibility determination between Johnson and Williams, the trial court properly denied the judgment of acquittal before the jury entered its verdict.” Slip opinion at 10. However after the jury entered its verdict “it became apparent that the jury did not believe there was a robbery attempt because they found Williams guilty of the lesser included offense of theft based on Felton’s taking of Brown’s bike after his death.” Slip opinion at 10, n.3. When the trial court ultimately denied the Defendant’s renewed motion for judgment of acquittal, it had the benefit of that jury verdict. Therefore the Defendant’s assertion of the defense of self-defense was proper because the jury found no robbery by the Defendant.

Arguably the Defendant should not have been convicted of petit theft. The Defendant was indicted for robbery under § 812.13(1) and (2)(a) and § 775.087(2) Florida Statutes, but he was not charged as a principal under § 777.011. R.091. Therefore, arguably, the charge in count three of the indictment did not support the conviction of the Defendant for the petit theft of the bicycle by co-defendant Felton. However the Defendant did not address that issue on appeal.

Nevertheless, whether or not the Defendant is properly guilty of petit theft, this Court has already concluded that that theft of the bicycle (by Felton) took place after Brown was already dead. Slip opinion at 10, n.3. The jury did not find the Defendant guilty of the charged robbery of Brown. Felton’s later act of taking

Brown's bicycle could not and did not establish that the Defendant was engaged in criminal activity before he shot Brown. Therefore the Defendant was entitled to assert the defense of self-defense. See § 776.012 Florida Statutes (2012).

### Conclusion

This Court held that the Defendant's "self-defense theory was only applicable if the jury did not find that the altercation began because of a robbery attempt." Slip opinion at 10. That is exactly what happened in this case. The jury acquitted the Defendant of robbery, and the trial court was well aware of that fact when it denied the Defendant's renewed motion for judgment of acquittal on the other counts. No competent substantial record evidence establishes that the Defendant was engaged in any other criminal activity before he shot Brown. Therefore he properly asserted the defense of self-defense. As explained at length in the briefs, the State did not present evidence to rebut that defense.

WHEREFORE the Defendant requests this Honorable Court to rehear this case. The Defendant requests this Court to find that the denial of the Defendant's renewed motion for judgment of acquittal by the trial court was reversible error, and requests this Court to remand this case with instructions to grant the Defendant's renewed motion for judgment of acquittal and to discharge the Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Rehearing has been furnished by email through the Florida Courts E-Filing Portal as provided by Fla. R. Jud. Admin. 2.516(b)(1) to the Attorney General of Florida (at [CrimAppTPA@myfloridalegal.com](mailto:CrimAppTPA@myfloridalegal.com)), 3507 East Frontage Road, Suite 200, Tampa, Florida 33607, on this 23rd day of April, 2018.

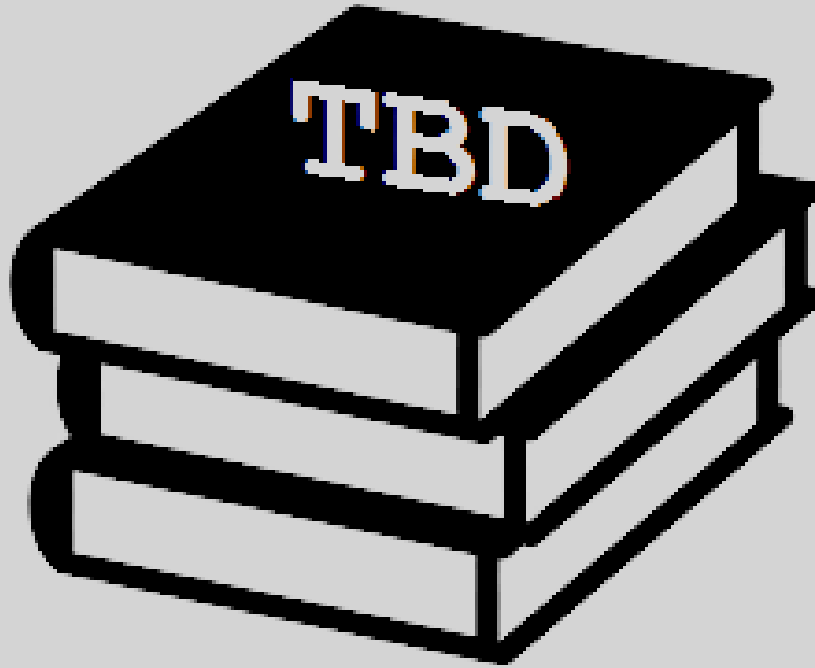


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