

Summary of SC90501, *State of Missouri v. Robert Earl Williams*

Appeal from the St. Louis city circuit court, Judge Lisa S. Van Amburg
Argued and submitted April 15, 2010; opinion issued May 25, 2010

Attorneys: Williams was represented by Gwenda Renee Robinson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by Mary H. Moore of the attorney general's office, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of second-degree robbery appeals the trial court's denial of a jury instruction he proffered for the lesser-included offense of felony stealing. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case for further proceedings. The evidence establishes a basis for the jury to find the man guilty of the lesser-included offense if the jury believes some of the man's testimony and disbelieves some of the state's evidence, which it is free to do. The man is not required to present affirmative evidence supporting the lesser-included offense instruction.

Facts: In January 2007, the state charged Robert Williams with second-degree robbery for forcibly stealing money from Timothy Wagner in October 2006. During a July 2008 jury trial, Williams testified that a friend took marijuana from Wagner at Wagner's apartment during a drug transaction that Wagner had arranged. He testified that he did not see the friend forcibly take money or marijuana from Wagner and that he had not taken – personally or forcibly – anything from Williams. After Williams concluded presenting his case, the trial court held a jury instruction conference outside the jury's presence. By written request, Williams submitted an instruction for felony stealing, a lesser-included offense to second-degree robbery. The state submitted a verdict-directing instruction for second-degree robbery. The trial court denied Williams' proffered instruction for the lesser-included offense and submitted only the state's proffered instruction to the jury, which found Williams guilty of second-degree robbery. In September 2008, Williams was sentenced as a persistent felony offender to 15 years in prison. He appeals.

REVERSED AND REMANDED.

Court en banc holds: The trial court erred in refusing to submit the lesser-included offense instruction to the jury. A defendant is entitled to an instruction on any theory the evidence establishes. For the court to submit an instruction for a lesser-included offense, there need only be a basis for the jury to acquit on the higher offense. If the evidence supports differing conclusions, the judge must instruct on each, if properly requested. The jury is free to believe all, part or none of the testimony of any witness. Here, the evidence provided the jury a basis to acquit Williams of second-degree robbery and convict him of the lesser-included offense of felony stealing from a person. Second-degree robbery requires the state to prove beyond a reasonable doubt that the defendant forcibly stole property. Stealing, however, does not require

the state to prove the element of force; rather, the state must prove beyond a reasonable doubt that the defendant appropriated, with the purpose of deprivation, another person's property or services either without the person's consent or by means of deceit or coercion. The jurors here could have believed Williams was complicit in taking money from Wagner, believed Wagner's testimony that no gun or knife was used, and disbelieved Wagner's testimony about the use of physical force. The state mistakenly relies on three cases relying on a previously overruled case that had said a trial court was not required to give the jury instructions as to lesser-included offenses merely because the jury might disbelieve some of the state's evidence. Williams was not required to present affirmative evidence supporting his instruction.