

Summary of SC94554, *State of Missouri v. Gary Leland Coleman*

Appeal from the Callaway County circuit court, Judge Kevin M.J. Crane
Argued and submitted February 3, 2015; opinion issued June 16, 2015

Attorneys: Coleman was represented by Amy M. Bartholow of the public defender's office in Columbia, (573) 882-9855; and the state was represented by Robert J. (Jeff) Bartholomew of the attorney general's office in Jefferson City, (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 appeals his second-degree robbery conviction for taking money from a bank. In a 5-2 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the trial court's judgment. There was sufficient evidence supporting the conviction because the facts and inferences from those facts support the conclusion that a reasonable person would perceive the man's actions as threatening and, as a result, would comply with his directive.

Judge Patricia Breckenridge dissents. She would reverse the man's conviction for insufficient evidence and would hold he is guilty of the lesser-included offense of felony stealing and would remand (send back) the case for sentencing on that crime.

Facts: In an encounter lasting less than a minute, Gary Coleman walked into a bank in October 2012, rested his forearm on the counter, handed the teller a plastic sack and said, "I need you to do me a favor. Put the money in this bag." The teller did so. When an assistant manager approached, Coleman told her to "stop where you are and don't move any farther." The assistant manager complied. Coleman took the money and ran out of the bank. The state charged Coleman as a persistent offender with one count of second-degree robbery. He was convicted as charged and sentenced as a persistent offender to 10 years in prison. Coleman appeals.

AFFIRMED.

Court en banc holds: There was sufficient evidence to support the conviction. The statute under which Coleman was convicted – section 569.030, RSMo – provides that a person commits the crime of second-degree robbery when "he forcibly steals property." Under section 569.010(1), RSMo, a person "forcibly steals" if, in the course of stealing, he "uses or threatens the immediate use of physical force" on another person for the purpose of defeating resistance to the theft or compelling the surrender of the property. In its 2014 decision in *State v. Brooks*, this Court held that determining the existence of a threat is an objective test that depends on whether a reasonable person would believe the defendant's conduct was a threat of the immediate use of physical force. Whether the threat implicit in a bank robbery would itself be sufficient depends on the facts of the case. Viewed in context, the facts and inferences from those facts support the conclusion that a reasonable person would perceive Coleman's actions as threatening and, as a result, would comply with his directive to put money in the bag. He approached the bank teller, kept one hand concealed, demanded money to which he had no lawful right and directed the manager not to move any farther when she approached to investigate the situation.

Dissenting opinion by Judge Breckenridge: The author would reverse Coleman’s conviction for insufficient evidence. There is no claim Coleman actually used physical force on another person to effectuate stealing money from the bank. Any victim of a bank robbery reasonably would be in fear that the victim is in danger because, while the robbery is in progress, the defendant could decide at any time to use force. But the reasonable perception that a victim is in danger of the use of force during a robbery is not sufficient to meet the requirement of section 569.010(1) that the defendant “uses or threatens to use the immediate use of physical force upon another person.” Coleman having his hand below the counter while he demanded money and directing the manager not to move any farther is insufficient to prove he threatened immediate use of power, violence, compulsion or restraint – the dictionary definition of “force” – against the teller or manager. Because there is not evidence that Coleman threatened the immediate use of physical force upon another person, the author would hold that Coleman is guilty of the lesser-included offense of felony stealing and would send the case back for sentencing on that crime.