"Appendix A"

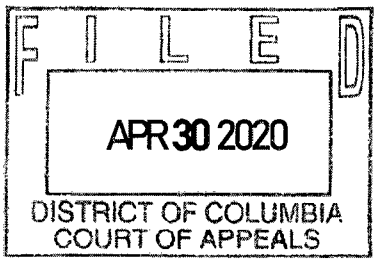
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-CO-326

ANTHONY BRAWNER A/K/A ANTHONY BARBER,* APPELLANT,

V.

UNITED STATES, APPELLEE.



Appeal from the Superior Court
of the District of Columbia
(FEL-963-03)

(Hon. Lynn Leibovitz, Motions Judge)

(Submitted March 20, 2019 Decided April 30, 2020)

Before GLICKMAN and THOMPSON, *Associate Judges*, and FERREN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant, Anthony Brawner, challenges the trial court's denial of his fourth D.C. Code § 23-110 (2012 Repl.) motion to withdraw his guilty plea to armed carjacking. He argues that the District of Columbia lacked jurisdiction to prosecute him for that charge because the carjacking occurred in Maryland. We affirm.

I.

On March 29, 2005, appellant pleaded guilty in D.C. Superior Court to seven offenses, including a count of armed carjacking. The carjacking charge stemmed from a 2004 incident in which appellant, armed with a gun, robbed a victim in front

* Appellant alternately signed his name "Anthony Brawner" and "Anthony Barber" in his § 23-110 motions.

of her Maryland apartment and forced her into the trunk of her own car. He then drove the victim's car into the District of Columbia and repeatedly stopped to remove the victim from the trunk and rape her. Additionally, according to the victim's account, appellant removed her from the trunk, forced her to provide the PIN for her ATM card, and then put her back in the trunk, threatening to kill her if the PIN was wrong.[1] Eventually, the victim was released. She promptly contacted the Metropolitan Police Department. Appellant was sentenced to an aggregate term of 51 years for the charges stemming from this and other incidents.

Thereafter, appellant brought three § 23-110 motions challenging the legitimacy of the carjacking charge on the theory that the District lacked "subject matter jurisdiction" because the crime was completed in Maryland.[2] The motion at issue in this case is the fourth such motion, and it repeats appellant's jurisdictional claim. At no time did appellant challenge the facts as stated above. The trial court denied the motion without holding a hearing.

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[1] We draw these details from a report of the victim's account that appellant appended to a previous § 23-110 motion.

[2] Although the trial court construed appellant's initial letter as a § 23-110 motion, bringing the total of previous motions to four, we do not construe it as such because the letter was not a formal motion and the trial court did not warn appellant that it intended to treat it like one. *See Hardy v. United States*, 988 A.2d 950, 963 (D.C. 2010) (holding that a *pro se* appellant's letter to a judge was "not properly characterized as a motion filed under D.C. Code § 23-110" where the letter was not styled as a motion and appellant's later motions indicated that he understood the formal motion process). In contrast, the other filings that the trial court viewed as § 23-110 motions were formal motions either captioned with other names or purportedly brought under other statutory provisions. We agree with the trial court that these motions fell under § 23-110.

II.

We review the trial court's denial of a § 23-110 motion without an evidentiary hearing for abuse of discretion.[3] Where an appellant's "allegations . . . would merit no relief even if true," we affirm the denial.[4]

The government argues that appellant's motion is procedurally barred because it raises a claim identical to the one he has repeatedly raised. The trial court has denied each of appellant's motions not only procedurally but also on the merits. The courts are not "required to entertain a second or successive motion for similar relief on behalf of the same prisoner."[5] This is true despite the fact that appellant alleges a lack of jurisdiction.[6] Because the motion at issue is appellant's fourth motion requesting the same relief on the same basis, we hold that it is procedurally barred.

Notwithstanding the procedural bar, we will also address the merits of appellant's jurisdictional claim because we have not previously done so. Appellant argues that because his actions in Maryland had already satisfied all the elements of the District of Columbia's carjacking statute before he drove into the District, the District lacked jurisdiction to prosecute him for the carjacking. Even if this claim is true, appellant would not be entitled to relief because the claim ignores his conduct within the District.

As the government points out, appellant's theory fails to account for the continuous nature of his crime. This court has recognized that "a crime may be the result of a series of acts[,] . . . [t]he direct consequences [of which] may be made to

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[3] *Artis v. United States*, 802 A.2d 959, 966 (D.C. 2002).

[4] *Id.*

[5] D.C. Code § 23-110(e).

[6] *See Neverdon v. District of Columbia*, 468 A.2d 974, 975 (D.C. 1983) ("[A]lthough strict principles of res judicata do not apply to motions seeking relief from an illegal sentence, this does not mean that a prisoner may again and again call upon a court to repeat the same ruling.") (internal quotation marks and citations omitted).

occur at various times and in different localities."[7] We have therefore held that the locality of a continuous crime is "[w]herever any part [of it] is done."[8] "Where [a criminal act] serves as one of several constituent elements to [a] complete offense, we have found jurisdiction to prosecute in the Superior Court, even though the remaining elements occurred outside of the District."[9]

Thus, even if appellant's actions within the District satisfied only some of the elements of carjacking, so long as his actions in Maryland were linked with his actions in the District as part of a continuous crime, he could properly be charged under the District's carjacking statute. Appellant's crime was certainly continuous, because directly after overpowering the vehicle's owner and pushing her in the vehicle's trunk, appellant drove the vehicle into the District of Columbia with its owner still trapped in the trunk.

The trial court recognized the continuity principle in its previous orders. For example, the court stated that, "[g]iven the mobile nature of the charges to which Defendant entered a plea . . . there is no factual or legal merit to his [jurisdictional] contentions." The court further found that "[t]he armed carjacking—in which the complainant was abducted from Maryland, brought into the District of Columbia while locked in her own trunk, then repeatedly raped—was one criminal transaction," and that "[t]he fact that the crime continued as the defendant drove the stolen car and victim into the District of Columbia, where he continued to assault the victim, makes the District of Columbia a lawful and appropriate jurisdiction in which to prosecute the defendant for his crimes."

Alternatively, even if we did not hold that the crime was continuous, appellant's actions within the District would satisfy the elements of carjacking, irrespective of what events occurred in Maryland. In the District of Columbia, "[a] person commits the offense of carjacking if, by any means, that person knowingly or recklessly by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, or attempts to do so, shall take from

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[7] *Adair v. United States*, 391 A.2d 288, 290 (D.C. 1978).

[8] *Id.*

[9] *United States v. Baish*, 460 A.2d 38, 40 (D.C. 1983), *abrogated on other grounds*, 80 A.3d 163 (D.C. 2013).

another person immediate actual possession of a person's motor vehicle."[10] While within the District, appellant knowingly and repeatedly took the immediate actual possession of the victim's motor vehicle by placing the victim in fear and forcing her back into the trunk after removing her and raping her. Thus, appellant's actions within the District alone are sufficient to satisfy the elements of carjacking.

Whether we consider the entire scope of appellant's actions or only those that occurred within the District, we can conclude that the trial court did not abuse its discretion in finding that the District had jurisdiction to accept his guilty plea to the charge of armed carjacking. Because appellant's allegations are procedurally barred and merit no relief, we affirm the trial court's denial of his § 23-110 motion

ENTERED BY DIRECTION OF THE COURT

Julio A. Castillo

JULIO A. CASTILLO

Clerk of the Court

[10] D.C. Code § 22-2803(a)(1) (2019 Supp.).