

# Supreme Court of Florida

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No. 66,483

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EDWARD BEN, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

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[September 4, 1986]

OVERTON, J.

We accepted jurisdiction in this cause, reported as Ben v. State, 461 So. 2d 286 (Fla. 2d DCA 1985), on the basis of conflict with Montsdoca v. State, 84 Fla. 82, 93 So. 157 (1922).<sup>\*</sup> We quash the decision of the district court of appeal on the authority of Royal v. State, 490 So. 2d 44 (Fla. 1986), and remand to the district court for reconsideration in light of our decision in that case.

It is so ordered.

McDONALD, C.J., and ADKINS, EHRLICH and SHAW, JJ., Concur  
BOYD, J., Dissents with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF  
FILED, DETERMINED.

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<sup>\*</sup>We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

BOYD, C.J., dissenting.

Because I find that the defendant used force to effectuate a taking of property from the possession of another, I would hold that the evidence showed the offense of robbery and would approve the decision of the district court of appeal.

Application for Review of the Decision of the District Court  
of Appeal - Direct Conflict of Decisions

Second District - Case No. 84-583

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Florida,

for Petitioner

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