

IN THE SUPREME COURT OF FLORIDA

JESSE SKINNER,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 65,510
DCA CASE NO. 83-1158

FILED

SID J. WHITE

JUL 2 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

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Skinner v. State
So.2d _____, 9 FLW 1161 (Case No. 83-1158)
(Fla. 5th DCA May 24, 1984) 1

OTHER AUTHORITIES:

Section 782.04(1)(a), Florida Statutes 1
Section 790.19, Florida Statutes (1983) 1,3

Rule 9.030(a)(2)(A)(iv), Florida Rule of Appellate
Procedure 4

STATEMENT OF THE CASE

Petitioner was indicted in Orange County, Florida for first degree murder from a premeditated design, in violation of Section 782.04(1)(a), Florida Statutes, and for shooting into a building, in violation of Section 790.19, Florida Statutes (R447). He was tried by a jury on July 17 through 21, 1983 (R2-445). After presentation of all the evidence, the Petitioner moved for a judgment of acquittal as to the charge of shooting into a building based on Golden v. State, 120 So.2d 651 (Fla. 1st DCA 1960) (R361). The motion was denied (R361). Petitioner was found guilty as charged of first degree murder and shooting into a building (R441). On July 21, 1983 Petitioner was sentenced to a term of natural life for first degree murder and to a term of fifteen (15) years for shooting into a building, to run concurrently with the life sentence (R463-465).

Petitioner's conviction and sentence for shooting into a building was appealed to the Fifth District Court of Appeal, and was affirmed on May 24, 1984 (See Appendix). In its decision in this cause, Skinner v. State, ___ So.2d ___, 9 FLW 1161 (Case No. 83-1158) (Fla. 5th DCA May 24, 1984), the Fifth District Court of Appeal expressed direct conflict with Golden v. State, 120 So.2d 651 (Fla. 1st DCA 1960). A timely notice to Invoke Discretionary Jurisdiction was filed on June 22, 1984.

STATEMENT OF THE FACTS

On the evening of January 4, 1983, Otto Smith and his daughter, LaTonya Smith, were sitting at the kitchen table in their residence (R34,40). The table was located in front of a large window which overlooked the front yard (R46). The window curtains were transparent and partially open (R41). Otto was sitting in front of the window (R40). At around nine o'clock p.m. LaTonya heard footsteps in the front yard (R46-47). She looked up from the table and saw her uncle, the Petitioner, in the yard running up to the window with a sawed-off shotgun (R46-48). Before she could warn her father, Petitioner pressed the gun against the window screen and fired at Otto Smith (R47,65). Smith expired as a result of shotgun injuries to the head (R25).

A firearms expert determined that the gun was fired at a distance of twenty-four inches or less from the window screen (R191).

A neighbor of the Smiths' observed the Petitioner walking to and from the Smiths' house several times shortly before the shooting (R254-256).

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT
COURT OF APPEAL EXPRESSLY AND DIRECTLY
CONFLICTS WITH GOLDEN V. STATE, 120
So.2d 651 (FLA. 1ST DCA 1960).

In the instant opinion the Fifth District Court of Appeal expressed direct conflict with Golden v. State, 120 So.2d 651 (Fla. 1st DCA 1960) and held that Section 790.19, Florida Statutes (1983), is violated not only when a person shoots at, within, or into a building per se, but also when a person shoots into a building with the specific intent of shooting at a human target located therein.

In Golden, supra, the defendant was convicted of assault to commit murder and shooting into a building. The pertinent facts in that case were that the defendant and victim had a heated argument while standing in the victim's yard. When the victim ran into his house, the defendant followed in hot pursuit and fired at the victim several times both before the victim entered the house and after he arrived inside. Bullets from the defendant's gun struck the exterior and interior of the house and one bullet also struck the victim. In reversing the conviction for shooting into a building the First District held that the Legislature did not intend the statute to cover situations in which a person intentionally shoots, not at the building per se, but at a human target located in a building. The Court stated:

The intent of the statute is obvious. It was enacted for the purpose of preserving the life and safety of anyone occupying a dwelling or other house, and to punish anyone who maliciously or wantonly shoots at or into such an occupied dwelling or house. The gravamen of the offense is the wanton or malicious shooting at or into a house. Although the evidence contained in the record clearly reveals that appellant was maliciously and wantonly shooting his pistol during the controversy, his malicious and wanton attitude was directed only toward Jernigan. There is no evidence which either directly or by inference could be said to establish the fact that appellant was wantonly or maliciously shooting at or into the house per se.

Id. at 653.


Because the statutory construction of the Fifth District Court of Appeal directly and expressly conflicts with that of the First District Court of Appeal, this Court should accept jurisdiction of the instant cause, pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

CONCLUSION

For the reasons expressed herein, the Petitioner respectfully requests this Honorable Court to accept jurisdiction of this cause and reverse the decision of the Fifth District Court of Appeal.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

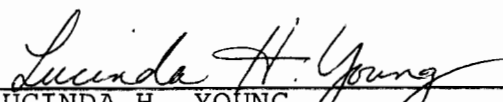


LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, 32014, on this 29th day of June, 1984; and mailed to Jesse Skinner, Inmate No. 090682, Union Correctional Institute, P.O. Box 221, Raiford, Florida 32083, on this 29th day of June, 1984.



LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER