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IN THE SUPREME COURT OF FLORIDA

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

CASE NO. 65,510

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PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner, JESSE SKINNER, was the Defendant and the Respondent was the Prosecution in the Circuit Court for Orange County, Florida. In the brief the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

"R" - Record on Appeal

STATEMENT OF THE CASE

Petitioner, JESSE SKINNER, 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). Skinner was found guilty as charged of first degree murder and shooting into a building (R441,493-494). On July 21, 1983, Skinner was sentenced to a term of natural life for first degree murder and to a term of fifteen 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, 450 So.2d 595 (Fla. 5th DCA 1984), the Fifth District Court of Appeal expressed direct conflict with Golden, supra. A timely Notice to Invoke Discretionary Jurisdiction was filed on June 22, 1984. On December 18, 1984, this Court accepted jurisdiction.

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, Skinner, in the yard running up to the window with a sawed-off shotgun (R46-48). Before she could warn her father, Skinner pressed the gun against the window screen and fired a shot into Otto Smith's head (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 Skinner walk to and from the Smiths' front window several times shortly before the shooting (R254-256). On Skinner's last trip to the window the neighbor heard the gunshot ring out (R255-256).

SUMMARY OF ARGUMENT

This Court should follow Golden v. State, 120 So.2d 651 (Fla. 1st DCA 1960), and construe Section 790.19, Florida Statutes, to require a specific intent to shoot the building per se.

ARGUMENT

SECTION 790.19, FLORIDA STATUTES, REQUIRES A SPECIFIC INTENT TO SHOOT AT THE BUILDING PER SE; SAID STATUTE IS NOT VIOLATED WHERE A PERSON SHOOTS, WITH A PREMEDITATED DESIGN TO KILL, A HUMAN TARGET LOCATED INSIDE THE BUILDING.

The issue in the present case involves the proper statutory construction of Section 790.19, Florida Statutes. That statute provides:

> Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locamotive, railway or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty of a felony of the second degree, punishable as provided in Section 775.082, Section 775.083, or Section 775.084.

In Golden v. State, 120 So.2d 651 (Fla. 1st DCA 1960), the defendant was convicted of assault to commit murder and wantonly or maliciously shooting into a building, in violation of Section 790.19. The pertinent facts in that case were that Golden and the 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 Golden'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 concluded that the Legislature did not intend Section 790.19 to cover situations in which a person intentionally shoots at a human target located inside 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 gravemen 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.

The Golden construction stood unchallenged for twenty-four years, until Ballard v. State, 447 So.2d 1040 (Fla. 2d DCA 1984), and Skinner v. State, 450 So.2d 595 (Fla. 5th DCA 1984). The fact that the Legislature, in the quarter century following the Golden decision, has made no significant amendments to the statute is a strong indication that the Legislature approves of Golden as an accurate interpretation of its intention.

Recently, the First District has purported to recede from Golden, supra. See Carter v. State, 9 FLW 2545 (Fla. 1st

DCA, December 6, 1984); Polite v. State, 454 So.2d 769 (Fla. 1st DCA 1984). However, as Judge Ervin pointed out in his dissent in Carter, supra, Golden remains good law unless the en banc procedure delineated in Florida Rule of Appellate Procedure 9.331 is followed.

Golden held that Section 790.19 requires a specific intent to shoot the building per se; that is, the wanton or malicious attitude must be directed at the building. Other criminal laws are designed to guard against attacks directed at human beings, such as the homicide statutes (as in the instant case where Skinner was convicted of first degree premeditated murder), and the aggravated battery and aggravated assault statutes. Petitioner submits that the Legislature did not intend that, in addition to these statutes, a violation of Section 790.19 also occur every time the victim is located in a building or vehicle when he is shot or when any "hard substance" is hurled at him. The specific intent necessary to constitute a violation of Section 790.19 and the state of mind required for first degree premeditated murder are mutually exclusive.

In Johnson v. State, 436 So.2d 248 (Fla. 5th DCA 1983) (Coward, J., specially concurring), Judge Cowart, in disagreeing with Golden, reasoned:

> Inanimate objects, such as houses and cars, seldom so offend a person as to become the subject of a malicious and wanton attitude and of a wrath such as would cause one to shoot the object per se. Such rare occurrences could hardly have been what the statute was intended to proscribe. Yet that is what Golden holds.

Even if an inanimate object is seldom so offensive as to cause a person to launch an attack on the object per se, common experience teaches that it is not uncommon for a person to lash out at inanimate objects in response to other stimuli even though the object per se is wholly inoffensive. A individual in a fit of anger pounds his fist against a door or wall. Other stimuli may provoke the response, but the inanimate object is nonetheless the target of the attack. Petitioner disagrees with the view expressed in Johnson, supra, that the shooting at an inanimate object such as a house or car on account of the object itself is such a rare occurence that the statute could not have been intended to proscribe such conduct.

The terms "maliciously" and "wantonly" have various meanings, depending upon their context. "Malice" has been variously defined as the state of mind which is reckless of law and of the legal rights of citizens, as the intentional doing of a wrongful act without just cause or excuse, and as importing that an act is done on purpose and with evil intent. Ramsey v. State, 114 Fla. 766, 154 So. 855 (1934); Lovett v. State, 30 Fla. 142, 11 So. 550 (1892). Wanton conduct "occurs when a person though possessing no intent to cause harm performs an act which is so unreasonable and dangerous that imminent likelihood of harm or injury to another is reasonably apparent". BLACK'S LAW DICTIONARY 1419 (5th ed. 1979). The term is used to denote a reckless, heedless, or malicious state of mind. Other courts, besides the Golden court, have recognized a distinction between malice directed at a particular object and general criminal

malice. For example, many courts have taken the view that the malice necessary to constitute the offense of malicious mischief must be directed at the owner or possessor of the damaged property and not merely against the property per se. 52 AmJur 2d, Malicious Mischief, Section 8 (and cases cited therein). See People v. Culp, 108 Mich.App. 452, 310 NW 2d 421 (1981).

A cardinal rule governing the construction of penal statutes is that where a statute admits of two possible interpretations, that which is most favorable to the accused must be adopted. Nell v. State, 277 So.2d 1 (Fla. 1973); Ex Parte Amos, 93 Fla. 5, 112 So. 289 (1927). Because Section 790.19 is fairly susceptible to the construction given it by the First District in Golden, that construction should be adopted as opposed to the much broader application given the statute by the Fifth and Second Districts.

CONCLUSION

BASED UPON the foregoing arguments and authorities, the Petitioner respectfully requests this Honorable Court to reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

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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, Fourth Floor, Daytona Beach, Florida 32014; and mailed to Jesse Skinner, Inmate No. 090682/ 083903, Union Correctional Institute, P.O. Box 221, Raiford, Florida 32083, on this 7th day of January, 1985.

Lucinda H. Young

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