

IN THE FLORIDA SUPREME COURT

REINALDO AMOROS, :

Appellant, :

vs. :

Case No. 68,840

STATE OF FLORIDA, :

Appellee. :

_____ :

FILED

SEP 11 1987

SEP 11 1987

CLERK OF THE COURT

Deputy Clerk

APPEAL FROM THE CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

DOUGLAS S. CONNOR
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STATEMENT OF THE CASE

Appellant, REINALDO AMOROS, will rely upon the Statement of the Case as presented in his initial brief.

STATEMENT OF THE FACTS

Appellant will rely upon the Statement of the Facts as presented in his initial brief.

SUMMARY OF THE ARGUMENT

Appellant's prior possession of the pistol which shot Omar Rivero was a relevant circumstance which the trial court correctly admitted into evidence. However, the court erred in allowing evidence of Appellant's use of that pistol on the prior date to shoot Walter Coney. Appellant's acquittal for the homicide of Coney made admission of this similar fact evidence fundamentally unfair.

Appellee's contention that Appellant was not prejudiced because the shooting of Coney was obviously accidental or self-defense is not supported by the record.

ARGUMENT

ISSUE I.

THE TRIAL COURT ERRED BY ADMITTING EVIDENCE OF A COLLATERAL CRIME FOR WHICH APPELLANT WAS ACQUITTED.

Appellant does not contest the assertion in Appellee's brief that:

evidence of Appellant's possession of the murder weapon, approximately one month prior to the murder, and enough of the surrounding circumstances of that possession as to put it in some logical context, was of sufficient probative value on the issue of Appellant's possession June 2nd as to outweigh on prejudice. Brief of Appellee, p.5-6.

Indeed, the State's case against Amoros could not have survived a motion for judgment of acquittal without evidence of Appellant's prior possession of the gun which shot Omar Rivero. The error committed by the trial court was failing to limit the evidence received by excluding mention of the shooting of Coney.

This Court has explained the basis for the general rule prohibiting evidence of collateral crimes:

Evidence that the defendant has committed a similar crime, or one equally heinous, will frequently prompt a more ready belief by the jury that he might have committed the one with which he is charged, thereby predisposing the mind of the juror to believe the prisoner guilty.
Nickels v. State, 90 Fla. 659, 106 So. 479 at 488 (1925)

Although the State now claims that "[i]t is obvious from these facts that the shooting of Walter Coney was accidental or was self-defense" (Brief of Appellee, p.8)^{1/} the prosecutor in the trial court suggested that Amoros was really guilty of murdering Coney, but was mistakenly acquitted. In addition, the trial judge instructed the jury that the evidence "may concern evidence of other crimes" (R393), that "[t]he defendant is not on trial for a crime that is not included in the Indictment" (R394), and that the evidence "which has been admitted to show similar crimes, wrongs or acts allegedly committed by the defendant" (R535) should be considered solely on the issue of identity.

It was certainly not impossible to give an intelligent account of Appellant's prior possession of the gun which shot Omar Rivero without referring to the shooting of Walter Coney. Since Amoros was acquitted of any wrongdoing in Coney's death, it was fundamentally unfair for the judge to allow details of this homicide into evidence. State v. Perkins, 349 So.2d 161 (Fla.1977). Certainly when the prosecutor argued, "[t]wo men in the company of the defendant's former girl friends, and they're both killed with the same gun" (R517), the State clearly used evidence of the Coney shooting to urge the jury to convict Amoros of Rivero's murder.

^{1/} See also, Brief of Appellee p.14.

To summarize, possession by Amoros of the murder weapon at an earlier time was relevant and properly admitted in evidence. Use by Amoros of the murder weapon at an earlier time was exceedingly prejudicial and should have been excluded from evidence. A new trial is warranted.

ISSUE II.

THE TRIAL COURT ERRED BY DENYING APPELLANT'S REQUEST FOR A JURY INSTRUCTION ON CIRCUMSTANTIAL EVIDENCE.

ISSUE III.

ADMISSION OF THE EVIDENCE RELATING TO A PRIOR OFFENCE FOR WHICH APPELLANT WAS ACQUITTED DEPRIVED APPELLANT OF A RELIABLE SENTENCING DETERMINATION UNDER THE UNITED STATES CONSTITUTION, EIGHTH AND FOURTEENTH AMENDMENTS.

ISSUE IV.

THE PROSECUTOR'S CLOSING ARGUMENT IN PENALTY PHASE MISSTATED THE EVIDENCE AND PUT OTHER IMPROPER CONSIDERATIONS BEFORE THE JURY.

ISSUE V.

THE HOMICIDE WAS NOT ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL.

ISSUE VI.

THE HOMICIDE WAS NOT COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

ISSUE VII.

A SENTENCE OF DEATH IS NOT PROPORTIONAL
UNDER THE FACTS OF THIS CASE.

Appellant will rely upon his argument as presented
in his initial brief.

CONCLUSION

Appellant will rely upon the conclusion as presented
in his initial brief.

Respectfully submitted,

JAMES MARION MOORMAN
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been
furnished to the Attorney General's Office, Park Trammell
Building, 1313 Tampa Street, 8th Floor, Tampa, Florida, 33602,
by mail on this 9th day of September, 1987.

Douglas S. Connor
DOUGLAS S. CONNOR