

IN THE SUPREME COURT OF FLORIDA

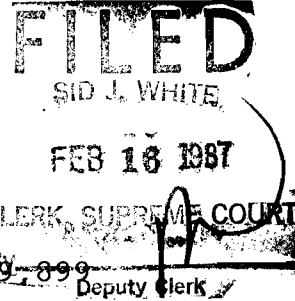
SUSAN STATEN a/k/a
SUSAN ANN STATEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.



Case No. 89-899

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

THEDA R. JAMES
Assistant Attorney General
Park Trammell Building
1313 Tampa Street, Suite 804
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
WHETHER THE DECISION IN <u>STATEN v. STATE</u> (2DCA CASE #85-2194, 12-23-86)[12 F.L.W. 72] IS IN CONFLICT WITH <u>MAGUIERA v. STATE</u> 494 So.2d 292 (FLA. 3DCA 1986), AS TO WHETHER A PERSON CAN BE CONVICTED FOR BOTH PRINCIPAL AND ACCESSORY AFTER THE FACT FOR THE SAME CRIME?	
CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

	<u>PAGE</u>
Baker v. State, 456 So.2d 419 (Fla. 1984)	3
Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932)	3
Maguiera v. State, 494 So.2d 292 (Fla. 3d DCA 1986)	3

OTHER AUTHORITIES

Sec. 775.021(4), Florida Statutes 1985	3
--	---

STATEMENT OF THE CASE

Respondent accepts petitioner's statement of the case as a substantially accurate account of the proceedings below.

STATEMENT OF THE FACTS

On February 7, 1984, a drug dealer named William Huggins was shot and killed. At approximately 11:00 p.m., petitioner and four others drove near a service station where Huggins was standing. Three people got out of the car while petitioner and one other person remained inside. Two men approached Huggins, one of them held a gun while they both searched the victim's pockets. As Huggins was being robbed, a third man approached two bystanders, put a gun in their faces and demanded money or jewelry. Huggins was shot and killed. One of the bystanders was injured. Following these incidents, the three men returned to the car and petitioner drove them to her mother's house.

SUMMARY OF ARGUMENT

Where opinions of Second District Court of Appeal and Third District Court of Appeal, although dealing with same issue were based upon different legal principles, petitioner has failed to demonstrate conflict.

ARGUMENT

WHETHER THE DECISION IN STATEN v. STATE
(2DCA CASE #85-2194, 12-23-86)[12 F.L.W.
72] IS IN CONFLICT WITH MAGUIERA v. STATE
494 So.2d 292 (FLA. 3DCA 1986), AS TO
WHETHER A PERSON CAN BE CONVICTED FOR
BOTH PRINCIPAL AND ACCESSORY AFTER THE
FACT FOR THE SAME CRIME?

Staten was convicted of second-degree murder, armed robbery, aggravated battery, and three counts of accessory after the fact. Petitioner argues that her accessory after the fact convictions should be reversed because the accessory charges arose out of those charges for which she was convicted as a principal. This argument was rejected by the Second District Court of Appeal. Applying the Blockburger¹ test the court held that Staten could properly be convicted and sentenced for each of the charges against her because each crime required proof of a statutory element which the others did not.

Petitioner argues that the decision in Staten is inconsistent with a decision of the Third District Court of Appeal, Maguiera v. State, 494 So.2d 292 (Fla. 3d DCA 1986). Maguiera, however, does not apply the Blockburger standard, which has been recognized by this court as the proper test to be applied in evaluating a claim of double punishment. See, Baker v. State, 456 So.2d 419 (Fla. 1984); Sec. 775.021(4), Fla. Stats. 1985. Given the fact that the two decisions, Staten and Maguiera, are based on different legal principles, petitioner has failed to demonstrate conflict and is not entitled to discretionary review.


¹Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932)

CONCLUSION

Based on the above-stated facts, arguments and authorities, Respondent would pray that this Honorable Court affirm the decision of the lower court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL


THEDA R. JAMES
Assistant Attorney General
Park Trammell Building
1313 Tampa Street, Suite 804
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular U. S. Mail to Deborah K. Brueckheimer, Assistant Public Defender, Hall of Justice Building, 455 North Broadway, P. O. Box 1640, Bartow, Florida 33830 this 13th day of February, 1987.


THEDA R. JAMES
OF COUNSEL FOR RESPONDENT