

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 71,356


JAMES ALLEN BRYANT,

Appellant,

v.

THE STATE OF FLORIDA

Appellee.

DEC 2 1988 ✓
CLERK, SUPREME COURT
By 
Deputy Clerk

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
CRIMINAL DIVISION

SUPPLEMENTAL BRIEF OF APPELLANT
JAMES ALLEN BRYANT

GEOFFREY C. FLECK, ESQUIRE
Special Assistant Public Defender
FRIEND & FLECK
5975 Sunset Drive, Suite 106
South Miami, Florida 33143
Tel.: (305) 667-5777

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF CITATIONS.....	ii
STATEMENT OF THE CASE AND STATEMENT OF THE FACTS.....	1
SUMMARY OF THE ARGUMENT.....	1
ARGUMENT	
I. THE TRIAL COURT ERRED IN FAILING TO GRANT THE DEFENDANT'S REPEATED MOTIONS FOR JUDG- MENT OF ACQUITTAL WHERE THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT, AS A MATTER OF LAW, TO ESTABLISH A PRIMA FACIE CASE OF GUILT AGAINST THE DEFENDANT FOR EITHER COUNT OF FIRST-DEGREE MURDER (II AND IV) OR BURGLARY (I).....	2
CONCLUSION	5
CERTIFICATE OF SERVICE.....	5

TABLE OF CITATIONS

	<u>Page(s)</u>
<u>Adams v. State,</u> 367 So.2d 635 (Fla. 2d DCA), <u>cert. denied</u> , 376 So.2d 68 (Fla. 1979).....	4
<u>Bullard v. State,</u> 151 So.2d 343 (Fla. 1st DCA), <u>cert. denied</u> , 162 So.2d 904 (Fla. 1963), <u>cert. denied</u> , 377 U.S. 992 (1964)..	4
<u>Cozakoff v. State,</u> 104 So.2d 59 (Fla. 2d DCA 1958).....	4
<u>Roberts v. State,</u> 154 Fla. 35, 16 So.2d 435 (1944).....	4
<u>State v. Pennington,</u> 13 FLW 678 (Fla. November 23, 1988).....	3,4

STATEMENT OF THE FACTS AND STATEMENT OF THE CASE

The appellant respectfully relies upon and restates the Statement of the Facts and Statement of the Case presented in his initial brief.

SUMMARY OF THE ARGUMENT

During its case-in-chief, the state utterly failed to prove a prima facie case of guilt against the defendant for the charge of burglary or either of the first-degree murders of which the defendant now stands convicted. While the state may have proved the defendant's knowledge of the homicides and even his participation in the disposal of the bodies and may have more clearly proved that the defendant disposed of one of the victim's property for personal gain, it completely failed to prove the defendant had prior knowledge of the homicides, intended the homicides, or participated in the homicides (or a burglary of victim Venecia's residence during the homicide). Since the only evidence supporting the defendant's convictions on these charges developed during the co-defendants' presentation of evidence, the trial court erred in failing to grant the defendant's repeated motions for judgment of acquittal.

ARGUMENT

I.

THE TRIAL COURT ERRED IN FAILING TO GRANT THE DEFENDANT'S REPEATED MOTIONS FOR JUDGMENT OF ACQUITTAL WHERE THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT, AS A MATTER OF LAW, TO ESTABLISH A PRIMA FACIE CASE OF GUILT AGAINST THE DEFENDANT FOR EITHER COUNT OF FIRST-DEGREE MURDER (II AND IV) OR BURGLARY (I).

The defendant stands convicted of armed burglary (Count I), arising from the murder of Arthur Venecia, and two counts of first-degree murder (Counts II and IV) deriving from the homicides of Arthur Venecia and Bessie Fisher. [R 6801-68031 This record is remarkable for the fact that the state presented no evidence of the defendant's guilt of these crimes during its case-in-chief. All of the evidence giving rise to the defendant's convictions on these counts of the indictment were presented during the presentation of evidence by the co-defendants. Accordingly, the trial court erred in failing to grant the defendant's motion for judgment of acquittal on these counts at the conclusion of the state's case and at the close of all the evidence.

During the state's case-in-chief, it established that Arthur Venecia and Bessie Fishes were the victims of "homicide by unspecified means." [TR 4744, 62311 The state introduced into evidence a redacted (to protect the co-defendants) version of the defendant's pre-trial statement in which he admitted having helped co-defendant Casteel dispose of the bodies by burying them. [R 7185-71931 In that statement, however, the defendant

1

consistently and steadfastly denied any prior knowledge of or complicity in, the deaths of either Venecia or Fisher. [R 7225, et. seq.] Casteel's pre-trial confession was also introduced into evidence but it, too, was carefully and properly redacted by the trial court to avoid any implication of defendant Bryant. [TR 4548, et. seq.; R 7266-73041 An additional pre-trial statement made by Casteel to Genevieve Regan and contemporaneously recorded by her daughter, Susan, was introduced into evidence by the state. CTR 3750-37721 This statement, too, was properly sanitized by the trial court to eliminate any reference to the defendant Bryant. The rest of the state's evidence consisted of a parade of witnesses (Riccio, Philpott, Haskins, Murphy, Morno, Sussman) who established that defendant Bryant sold much of Venecia's property, including an organ, boat, camper, house, and stocks, subsequent to Venecia's death.

Accordingly, in a light most favorable to the state, the prosecution proved only the defendant Bryant's opportunism and the grand-theft charges in Counts IV through X. It was only after the state rested, during the defendants' case and co-defendant Casteel's testimony in particular, that any evidence whatsoever was presented to the jury establishing defendant Bryant's complicity in the burglary or homicides charged. Accordingly, the trial court committed reversible error in failing to grant the defendant's motion for judgment of acquittal on these counts made at the close of the state's case [TR 4794-48001 and renewed motion at the end of the case. [TR 5657-5664]

This Court, in State v. Pennington, 13 FLW 678 (Fla. November

23, 1988), laid to rest any question that may have existed regarding the effect of an inculpatory defense case effecting a defendant's entitlement to a judgment of acquittal after an insufficient prosecutorial case. Disapproving all other conflicting decisions including Adams v. State, 367 So.2d 635 (Fla. 2d DCA), cert. denied, 376 So.2d 68 (Fla. 1979), Bullard v. State, 151 So.2d 343 (Fla. 1st DCA), cert. denied, 162 So.2d 904 (Fla. 1963), cert. denied, 377 U.S. 992 (1964); Cozakoff v. State, 104 So.2d 59 (Fla. 2d DCA 1958); and Roberts v. State, 154 Fla. 36, 16 So.2d 435 (1944), this Court held, answering the Fourth District's certified question in the affirmative, that where the state has failed to make a prima facie case and the defendant moves for a judgment of acquittal which is denied and thereafter, during the defendant's case evidence is presented that supplies essential elements of the state's case, it is reversible error for the trial court to deny the defendant's motion for judgment of acquittal made at the conclusion of all the evidence.

Here, in light of the failure of the state's case to establish a prima facie case of guilt and this Court's recent decision in State v. Pennington, supra, reversal of the defendant's convictions on both counts of first-degree murder and burglary (Counts I, II, IV) is compelled.

CONCLUSION

WHEREFORE, based upon the foregoing arguments and authorities, the defendant respectfully urges this Court to reverse his convictions for first-degree murder and burglary, to vacate the sentences imposed thereon, and to discharge him on Counts I, II and IV of the indictment.

Respectfully submitted,

FRIEND & FLECK
Sunset Station Plaza
Suite 106
5975 Sunset Station
South Miami, Florida 33143
Tel.: (305) 667-5777

By:

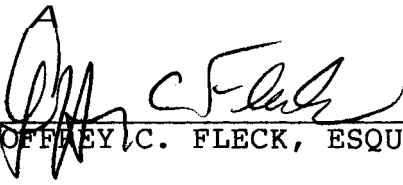


GEOFFREY C. FLECK, ESQUIRE
Special Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded to Charles Fahlbusch, Esquire, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128, Lee Weissenborn, Esquire, 235 N.E. 26th Street, Miami, Florida 33136, Gary W. Pollack, Esquire, 1320 S. Dixie Highway, Suite 275, Coral Gables, Florida 33146, and Sheryl Lowenthal, Esquire, 2550 S.W. Douglas Road, Suite 206, Coral Gables, Florida, this 30th day of November, 1988.

By:



GEOFFREY C. FLECK, ESQUIRE