

IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,492

DIETER RIECHMANN,

Appellant

vs.

THE STATE OF FLORIDA,

Appellee.

FILED

SID J. WHITE

FEB 1 1991

CLERK, SUPREME COURT

By
Deputy Clerk

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

APPELLEE'S SUPPLEMENTAL ANSWER BRIEF

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

RALPH BARREIRA
Florida Bar No. 0374490
Assistant Attorney General
Department of Legal Affairs
Ruth Bryan Owen Rohdes Building
401 N. W. 2nd Avenue, Suite N921
Miami, Florida 33128
(305) 377-5441

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INTRODUCTION

The parties will be referred to and the record will be cited as in the State's initial brief.

STATEMENT OF THE CASE AND FACTS

The State will rely on the Statement of Case and Facts contained in its initial brief.

STATEMENT OF THE ISSUES

I.

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS THE CONTENTS OF THE TRUNK OF THE DEFENDANT'S VEHICLE.

II.

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTIONS FOR MISTRIAL, JUDGEMENT OF ACQUITTAL AND NEW TRIAL.

III.

WHETHER THE CONVICTIONS SHOULD BE SET ASIDE BECAUSE THE DEFENDANT BELIEVES SEVERAL STATE WITNESSES LIED AT TRIAL.

IV.

WHETHER THE CONVICTIONS SHOULD BE SET ASIDE BECAUSE THE DEFENDANT BELIEVES OFFICER PSALTIDES "OVERSTATED" THE DEFENDANT'S STATUS AS A SUSPECT TO THE GERMAN POLICE.

V.

WHETHER THE CONVICTIONS SHOULD BE SET ASIDE BECAUSE THE DEFENDANT BELIEVES THE STATE'S GUNSHOT RESIDUE EXPERT LIED AT TRIAL.

VI.

WHETHER THE TRIAL COURT ERRED IN NOT ALLOWING THE DEFENDANT TO TESTIFY FULLY AS TO THE CIRCUMSTANCES SURROUNDING THE DEFENDANT'S INCARCERATION AT METRO CORRECTIONAL CENTER.

VII.

WHETHER THE POLICE VIOLATED THE SPEEDY TRIAL RULE BY NOT ARRESTING THE DEFENDANT FOR THE MURDER IN THE FOUR DAY PERIOD AFTER THE MURDER.

VIII.

WHETHER THE CONVICTIONS SHOULD BE SET ASIDE BECAUSE THE "TREFFPUNKT" MAGAZINE FOUND IN THE DEFENDANT'S GERMAN APARTMENT WAS NOT LISTED IN THE SEARCH INVENTORY PROVIDED BY THE GERMAN POLICE.

SUMMARY OF ARGUMENT

Several of the eight supplemental claims were raised in the defendant's brief, and the rest are totally devoid of any merit whatsoever.

ARGUMENT

I.

THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO SUPPRESS THE CONTENTS OF THE TRUNK OF THE DEFENDANT'S VEHICLE.

The defendant raised this precise issue, regarding the validity of the search of the trunk of his vehicle, in his initial brief, and the State's response thereto is at pages 104-109 of its answer brief.

II.

THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTIONS FOR MISTRIAL, JUDGMENT OF ACQUITTAL, AND NEW TRIAL.

In his supplemental brief the defendant does not specify what motions for mistrial he is referring to, other than that they are the same ones addressed in his initial brief. The State will thus rely on its initial brief. The denial of the defendant's motion for judgment of acquittal is likewise dealt with in the initial briefs under Issue VII. The defendant does not argue any new matters relating to the denial of his motion for new trial, and again the State will thus rely on its initial brief.

III.

THE CONVICTIONS SHOULD NOT BE SET ASIDE
BECAUSE THE DEFENDANT BELIEVES SEVERAL
STATE WITNESSES LIED AT TRIAL.

If the credibility of State witnesses was determined by the defendant, as opposed to the jurors, the State's conviction rate would in all likelihood decrease, perhaps dramatically. The State would offer the same response as to claims IV and V as well.

IV.

THE CONVICTIONS SHOULD NOT BE SET ASIDE
BECAUSE THE DEFENDANT BELIEVES OFFICER
PSLATIDES "OVERSTATED" THE DEFENDANT'S
STATUS AS A SUSPECT TO THE GERMAN POLICE.

Again, the defendant's opinion as to whether a State witness lied, "overstated" the facts, etc., is irrelevant. That is for the trier of fact to decide.

V.

THE CONVICTIONS SHOULD NOT BE SET ASIDE
BECAUSE THE DEFENDANT BELIEVES THE
STATE'S GUNSHOT RESIDUE EXPERT LIED AT
TRIAL.

See III and IV above.

VI.

THE TRIAL COURT DID NOT ERR IN NOT
ALLOWING THE DEFENDANT TO TESTIFY FULLY
AS TO THE CIRCUMSTANCES SURROUNDING HIS
INCARCERATION AT METRO CORRECTIONAL
CENTER.

The State is at a complete loss because the defendant has not specified in what manner the trial court restricted his testimony as to what occurred at Metro Correctional Center, and in particular his relationship there with State witness Walter Symkoswki. The defendant was not, so far as the State can ascertain, restricted in his testimony regarding his association with Symkowski. (T.4587-92, 4614, 15). The only "restriction" the State is aware of is an agreement by both parties not to bring out the reason the defendant was incarcerated at Metro Correctional Center, i.e., his Federal Firearms charges. (T.4578). The State is not aware of any other limits as to testimony regarding the defendant's stay at Metro Correctional Center.

VII.

THE POLICE DID NOT VIOLATE THE SPEEDY TRIAL RULE BY FAILING TO ARREST THE DEFENDANT IN THE FOUR DAY PERIOD AFTER THE MURDER.

There is no statute of limitations for first degree murder, nor to the State's knowledge, is there a "speedy arrest" right, which in essence is what the defendant is claiming.

VIII.

THE CONVICTIONS SHOULD NOT BE SET ASIDE BECAUSE THE "TREFFPUNKT" MAGAZINE FOUND IN THE DEFENDANT'S GERMAN APARTMENT WAS NOT LISTED IN THE SEARCH INVENTORY PROVIDED BY THE GERMAN POLICE.

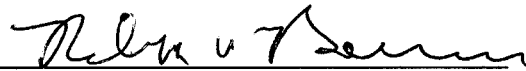
The fact that the inventory does or does not contain the Treffpunkt (swingers) magazine is certainly exciting news, but it does not alter the fact that Officer Wenk testified he found it in the defendant's/victim's german apartment. The magazine's sole value was that it helped establish that the victim was working as a prostitute prior to her death, a fact that the State thoroughly established through the testimony of numerous witnesses, especially Dina Moehler (T.3146-3225, see State's answer brief pages 51-53). Additionally, it is the magazine itself, containing the victim's solicitation ad, which was relevant, not the fact it was found in the defendant's/victim's apartment. The State could have achieved the same probative effect by introducing any copy of the magazine.

CONCLUSION

The convictions and sentence are proper, and should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



RALPH BARREIRA
Florida Bar No. 0374490
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue, Suite N921
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing APPELLEE'S SUPPLEMENTAL ANSWER BRIEF was furnished by mail to LEE WEISSENBORN, Oldhouse, 235 N. E. 26th Street, Miami, Florida 33137 on this 31 day of January, 1991.



RALPH BARREIRA
Assistant Attorney General

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