

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,237

THE STATE OF FLORIDA,

Petitioner,

vs .

ANGELO MAURICE REDDICK,

Respondent .

FILED

SID J. WHITE

FEB 1 1990

CLERK, SUPREME COURT

By _____

Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

Petitioner, the State of Florida, was the prosecution in the trial court and the appellee in the Third District Court of Appeal. Respondent, Angelo Maurice Reddick, was the defendant in the trial court and the appellant in the Third District Court of Appeal. All parties will be referred to as they stood in the lower court. The symbol "R" will be used to refer to the record on appeal. The symbol "T" will be used to refer to the transcript of the lower court proceedings. The symbol "App." will be used to refer to the appendix attached to this brief consisting of the opinion of the District Court.

STATEMENT OF THE CASE

The defendant was charged in a four count information with first degree murder; attempted first degree murder; shooting into an occupied dwelling; and possession of a firearm during the commission of a felony. (R. 1-2A, **3-5A**). After a trial by jury, a verdict was returned finding the defendant guilty as charged. (R. **40-43**). Judgment of guilt was entered as to all counts and the defendant was sentenced to a term of incarceration for life on the murder conviction; 17 years on the attempted murder conviction; and 15 years on the shooting into an occupied dwelling conviction. (R. **44-45, 54-57**). Sentence was suspended on the possession of a firearm during the commission of a felony conviction. (R. 58).

The defendant appealed his convictions to the Third District Court of Appeal and the court affirmed the convictions for first degree murder and attempted first degree murder, but reversed and vacated the convictions for shooting into an occupied dwelling and possession of a firearm during the commission of a felony upon a Carawan analysis. See Carawan v. State, 515 So.2d 161 (Fla. 1987). (App. 1-3). The Court recognized that in vacating the conviction for shooting into an occupied dwelling, it was in conflict with Kelly v. State, wherein the Fifth District Court of Appeal upheld multiple convictions and sentences for attempted murder, shooting into an occupied vehicle, and aggravated assault with a firearm. (App. 1-3). Reddick v. State, ____ So.2d ____, Case No. 89-76 (Fla. 3d DCA December 12, 1989) [14 F.L.W. 28661.

STATEMENT OF THE FACTS

On September 19, 1986, at least four shots were fired into the open door of a home located at 5924 N.W. 1st Place, Miami, Florida. (T. 123, 154, 175, 279, 300). When the shots were fired, there were four adults and two children inside the home. (T. 178-180, 182). One of the bullets struck Jacob Rossmund in the hand and another struck Ives Terrible, resulting in his death. (T. 188-189, 250, 256, 300, 303).

A witness to the shooting, Jean Brumaire, testified that she observed the defendant firing the shots. (T. 142-143, 154, 159, 166-170). Mr. Brumaire knew the defendant and selected his photograph from a photo display. (T. 238). In addition, a police officer who observed the shooting testified that the shooter was moving from side to side taking aim into the open door of the house. (T. 289, 327).

Just prior to the shooting, Jacob Rossmund had entered the home and asked for something to drink. While there, he kept staring out of the window until the shooting began. (T. 182-183). Testimony established that Jacob Rossmund and the defendant had been involved in a fight on the previous day and that Mr. Rossmund had beaten the defendant's brother up. (T. 316). Another argument had ensued on the day of the shooting during which the defendant had advised Mr. Rossmund that, "I am going to get you", and pulled out a weapon. (T. 316-317). None of the other occupants of the house knew the defendant. (T. 185, 191).

POINT ON APPEAL

WHETHER THE DEFENDANT'S CONVICTION FOR SHOOTING INTO AN OCCUPIED DWELLING VIOLATES THE PRINCIPLES ENUNCIATED IN CARAWAN v. STATE, 515 So.2d 161 (Fla. 1987), WHERE THE DEFENDANT WAS ALSO CONVICTED OF FIRST DEGREE MURDER AND ATTEMPTED FIRST DEGREE MURDER ARISING FROM THE SAME TRANSACTION?

SUMMARY OF ARGUMENT

The Third District Court of Appeal erroneously vacated the defendant's conviction for shooting into an occupied dwelling where the conviction did not violate the defendant's double jeopardy rights. Initially, the conviction was based upon an act separate and apart from those which formed the basis of his convictions for first degree murder and attempted first degree murder. Secondly, the offenses each contain elements that the others do not and there is no apparent legislative intent that separate punishments were not appropriate for each offense. The statutes address separate evils and separate punishments are appropriate.

ARGUMENT

THE DEFENDANT'S CONVICTION FOR SHOOTING INTO AN OCCUPIED DWELLING DOES NOT VIOLATE THE PRINCIPLES ENUNCIATED IN CARAWAN v. STATE, 515 So.2d 161 (Fla. 1987), WHERE THE DEFENDANT WAS ALSO CONVICTED OF FIRST DEGREE MURDER AND ATTEMPTED FIRST DEGREE MURDER ARISING FROM THE SAME TRANSACTION.

In Carawan v. State, 515 So.2d 161 (Fla. 1987), this Court set forth "a series of analytical steps or rules of construction" to be followed to determine whether a single act could be the basis for multiple convictions.¹ The Carawan opinion made clear that the holding applies only to separate punishments arising from one single act and not merely one transaction. Carawan v. State, supra at 170. n.8.

The first rule applied in Carawan is that "specific, clear and precise statements of legislative intent control regarding intended penalties." Carawan v. State, supra at 165. Secondly, in the absence of clear legislative intent, the test established in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76

¹ The legislature amended section 775.021(4) so as to override the Carawan decision in chapter 88-131, section 7, Laws of Florida. This statutory amendment only applies to offenses that occur after July 1, 1988, the effective date of the amendment. State v. Smith, 547 So.2d 613 (Fla. 1989). As the offenses in the instant case were committed prior to this date, the amended statute does not apply.

L.Ed.306 (1932), is applied to determine whether each offense has one element that the other does not. If so, then a presumption arises that the legislature intended that the offenses are separate. Finally, the "rule of lenity" is applied to resolve all doubts as to legislative intent in favor of the defendant.

Applying these rules of construction to the facts in the instant case, it is clear that the defendant's conviction for shooting into an occupied dwelling was proper even though he was also convicted of first degree murder and attempted first degree murder.

Initially, the defendant's convictions are not predicated upon "one single underlying act" and, therefore, the Carawan analysis does not apply. In Carawan, the defendant fired a number of shots into a home and the victim was struck by a bullet which resulted in the defendant's convictions for attempted first degree murder, aggravated battery, and shooting into an occupied structure. In finding that the convictions for both attempted first degree murder and aggravated battery could not stand, this Court emphasized that the holding applies only to separate punishments arising from one act. In so doing the Court stated:

Although there is some question as to the number of shots that actually struck Knighten, we find that the record does not establish beyond a reasonable doubt that he

was struck by more than one blast. Thus, we must conclude that both offenses in question are predicated on one single underlying act.

Carawan v. State, supra at 170. Implicit in this statement is the recognition that if the victim had been struck by two bullets, the offenses would not have been predicated on one single act and, therefore, would not have been impermissible.

In the instant case, the record established that the defendant fired at least four shots into the home. (T. 154, 279). One bullet struck Mr. Rossmund and one struck Mr. Terrible, resulting in the first degree and attempted first degree murder convictions. (T. 188-189, 256, 300, 303). There were two additional shots fired into the home, however, thus establishing a separate underlying act which formed the basis for the shooting into an occupied building conviction. Thus, as clearly recognized by this Court in Carawan, the decision does not apply to the facts in the instant case.

Secondly, applying the rules of construction enunciated in Carawan, it is clear that the conviction for shooting into an occupied dwelling should be upheld. There is no specific, clear and precise legislative intent as to whether a person can receive separate punishments for shooting into an occupied dwelling and first degree murder or attempted first degree murder. Accordingly, the next step in the process is application of the

Blockburger test to determine whether each statute requires proof of a fact that the other does not.

The defendant was convicted of first degree murder; attempted first degree murder; and shooting into an occupied dwelling.² The statutory elements of first degree murder are: (a) the unlawful (b) killing (c) of a human being (d) when perpetrated from a premeditated design to effect the death of the person killed or any human being. Section 782.04(1), Florida Statutes (1987). The statutory elements of shooting into a dwelling are: (a) the wanton or malicious (b) shooting (c) within or into a building. Section 790.19, Florida Statutes (1987). See Skinner v. State, 450 So.2d 595 (1984), review denied, 470 So.2d 702 (1984). These crimes have no elements in common and thus a presumption arises that the offenses are separate.

Carawan makes clear, however, that the Blockburger presumption can be overcome if the court finds a contrary legislative intent and, if so, that all doubts are to be resolved in favor of lenity toward the accused. Carawan v. State, supra

² The defendant was also convicted of possession of a firearm during the commission of a felony, but the Third District vacated the conviction based upon Carawan. (App. 1-3). Reddick v. State, ___ So.2d ___, Case No. 89-76, (Fla. 3d DCA December 12, 1989)[14 F.L.W. 2866]. The state does not contest that result.

In addition, the first degree murder charge and the attempted first degree murder charge stemmed from injuries sustained by separate victims.

at 165, 168. In this case, there is no contrary legislative intent. The murder statute is aimed at an entirely different evil than the shooting into an occupied building statute. The first degree murder statute seeks to address the evil of premediated killing. The shooting into an occupied building statute was enacted to preserve the life and safety of anyone occupying a dwelling or other house, including unintended victims, and to punish anyone who maliciously or wantonly shoots at or into such a dwelling or house. See Golden v. State, 120 So.2d 651 (1960). Thus each statute is aimed at a different evil, to wit: the premediated killing of another and the threat of dangers to others caused by shooting into a dwelling. As such, there is no violation of the defendant's double jeopardy rights. See Johnson v. State, 535 So.2d 651 (Fla. 3d DCA 1988)(defendant's convictions for possession of a firearm by a convicted felon, carrying a concealed firearm, and possession of a short-barreled weapon proper under Carawan analysis where each statute addressed a different evil); St. Fabre v. State, 548 So.2d 797 (Fla. 1st DCA 1989)(defendant's convictions for sale of cocaine and possession of cocaine proper under Carawan analysis where there is no indication that legislature did not intend to punish separately and each statute addresses separate evils).

There is no stronger support for the state's position than the Carawan case itself. Carawan was convicted of attempted manslaughter, aggravated battery, and shooting into an occupied

structure. These charges stemmed from the defendant's actions of shooting several times into a home, with one shot striking the victim. This Court, after thorough analysis, held that the defendant's convictions for both attempted manslaughter and aggravated battery were impermissible. Yet the defendant's conviction for shooting into an occupied structure was left intact. As such, this Court has implicitly recognized the propriety of multiple convictions for manslaughter or aggravated battery and shooting into an occupied structure. See Curry v. State, 539 So.2d 573 (Fla. 5th DCA 1989)(defendant convicted of second degree murder, shooting or throwing a deadly missile into a building, and use of a firearm while committing a felony entitled to reversal only of conviction for use of a firearm in the commission of felony); Kelly v. State, ___ So.2d ___, Case no. 88-350 (Fla. 5th DCA July 13, 1989)[14 F.L.W. 1678](defendant properly convicted of three counts of attempted murder and three counts of shooting into an occupied vehicle). Cf. Torres v. State, 527 So.2d 272 (Fla. 3d DCA 1988).

CONCLUSION

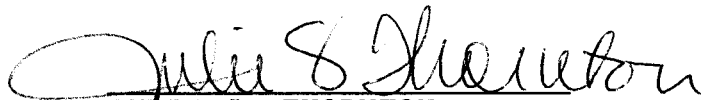
Based upon the foregoing reasons and citations of authority, the State would respectfully urge that this Court quash that portion of the opinion below which reverses and vacates the defendant's conviction for shooting into an occupied building.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON THE MERITS was furnished by mail to the LAW OFFICES OF MAX P. ENGEL, 1461 N.W. 17th Avenue, Miami, Florida 33125, on this 29 day of January, 1990.



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