FILED
SID J. WHITE
JUN 24 1996
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

ANTONIO LEE CRAFT,

Respondent.

CASE NO. 87,545

PETITIONER'S REPLY BRIEF ON THE MERITS/ BRIEF OF CROSS-RESPONDENT ON MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, ANTONIO LEE CRAFT, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The symbol "R" will refer to the record on appeal, and the symbol "T" will refer to the transcript of the trial court's proceedings; "F" will be used to refer to the second trial transcript on the firearms possession charge; "AB" will designate the Answer Brief of Respondent. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State will rely upon its original statement regarding the issue it has presented to the court.

Regarding the cross petition, the State notes the following facts:

Regarding Issue I: The garbage can searched by the police was located outside a privacy fence. Ms. Craft testified that she never intended to "protect" her garbage can from public access even though she did not "give permission" to people to use it. (R. 288-289) The record does not show any expectation of privacy on the part of Craft in his mother's garbage or garbage can.

Regarding Issue II: The defendant, through counsel (Mr. France) later moved to represent himself as co-counsel, but made it clear that he had absolutely no desire to represent himself without counsel. (R. 200) The record does not show an unequivocal request to represent himself.

Regarding Issue III: The record does not show any "Williams Rule" objection nor does it show a claim that the murder case was a feature of the trial on the gun charge. During the trial, the defense requested a special, limiting, jury instruction on the collateral crime evidence, and the requested instruction limiting the jury's use of said evidence was given. (F. 111-112)

SUMMARY OF ARGUMENT

ISSUE I. The intent of the Legislature is the controlling factor in any "double-jeopardy" analysis rather than the "intent of the court" as argued by the Respondent. The manifest intent of the Legislature was to permit multiple convictions and punishments for separate offenses.

The three issues raised by the Cross-Petitioner simply ask this Court to review the factual determinations of the trial court and the District Court of Appeal in the absence of any showing of either a disregard for controlling law or the lack of any record basis for the lower court decisions. The District Court is the final court of appellate jurisdiction. This Court has discretion not to entertain every argument expressing disagreement with findings of fact or discretionary rulings by the lower courts. Should discretionary review be granted, it is clear that there were no errors made by the trial court on any of the questions presented.

ARGUMENT

ISSUE I

WHEN A DEFENDANT COMMITS SEPARATE OFFENSES DURING THE SAME CRIMINAL EPISODE, EACH INVOLVING A FIREARM, BUT EACH HAVING SEPARATE AND DISTINCT ELEMENTS, MAY THE DEFENDANT BE CONVICTED AND SENTENCED FOR EACH? [The Certified Question}

In reply to the State's argument regarding the supremacy of Legislative intent and the requirements of the Constitution, Craft offers the following argument:

"The Court has expressed its intent that a defendant cannot be punished twice for the same firearm offense." (AB 19)

The argument overlooks several key points.

First, no one has suggested that there should be multiple prosecutions for the same offense. The question before this Court involves the prosecution and punishment of different and distinct firearms offenses which just happen to be committed during a single transaction. It is this failure to distinguish "single crimes" from "single transactions" that seems to lie at the heart of the controversy surrounding the double jeopardy issue. Contrast, Carawan v. State, 515 So. 2d 161 (Fla. 1985) (The legislature did not intend multiple punishments for a single act) with State v. Smith, 547 So. 2d 614 (Fla. 1989)(The legislature intends multiple

punishments for separate offenses regardless of the number of acts; section 775.021(4) should be strictly applied to punish all separate offenses without judicial gloss).

Second, while the State will not repeat its entire argument from its initial brief, it will note once again that there is nothing talismanic about "firearms" so as to automatically expand the Double Jeopardy Clause. Indeed, it would be unreasonable to suppose that the framers of the Constitution wanted to extend special Double Jeopardy rights to criminals who use guns as opposed to other offenders. Nevertheless, the argument being advanced by petitioner and others under the umbrella of State v. Stearns, 645 So.2d 417 (Fla. 1994) is that criminals who arm themselves with guns automatically qualify for special immunities from prosecution unavailable to criminals who do not use guns. The Double Jeopardy clause protects persons, not firearms.

Third, the State submits that this Court never intended such an counterproductive result. Stearns, in fact, contains no "double jeopardy" analysis at all, and the notion that Stearns precludes prosecution for multiple-firearms offenses conflicts with other decisions of this Court allowing separate prosecution and punishment of firearms offenses committed during a single transaction. See, State v. Hollinger, 581 So.2d 153 (Fla. 1991);

Skeens v. State, 556 So.2d 1113 (Fla. 1990); Jones v. State, 569 So.2d 1234 (Fla. 1990)

The Stearns decision cites back to State v. Brown, 633 So.2d 1059 (Fla. 1994). The Brown case, however, dealt with two firearms offenses, committed in a single transaction, which had identical elements. Accordingly, Brown did not create an exception to either Legislative intent as set forth in § 775.021 Fla. Stat. or the controlling caselaw. Missouri v. Hunter, 459 U.S. 539 (1983); see e.g., State v. Rodriguez 500 So.2d 120 (Fla. 1986); Love v. State, 559 So.2d 198 (Fla. 1990); Jones v. State, 608 So.2d 797 (Fla. 1990)

Fourth, because Double Jeopardy is also an issue of federal constitutional law, and the Florida and United States Double Jeopardy clauses are coextensive[1], it is significant that the federal courts have never employed a per se bar to prosecution of multiple firearms related offenses committed during a single transaction. See, United States v. Centeno-Torres, 50 F.3d 84 (1st Cir. 1995); United States v. Shavers, 820 F.2d 1375 (4th Cir. 1987); United States v. Harris, 832 F.2d 88 (7th Cir. 1987); United States v. Holloway, 905 F.2d 893 (5th Cir. 1990). There is,

[1] Carawan, 515 So. 2d at 163, n3 and 164.

accordingly, no support for the contention that multiple firearms offenses cannot be separately punished under either the Florida or United States Constitutions. Section 775.021(4), Florida Statutes, as this Court has held, is simply a codification of Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932) and Missouri v. Hunter. Carawan. Indeed, section 775.021(4) limits multiple punishments more than the Double Jeopardy clause does.

The certified question should be answered in the affirmative.

ISSUE II

DID THE TRIAL COURT ERR BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS? (Restated)

The next three issues addressed by this brief are the issues offered up for discretionary review by the Respondent/Cross-Petitioner, Craft.

While it is true that the acceptance of a certified question for discretionary review provides the Court with jurisdiction to consider other issues, that jurisdiction is discretionary. Thus, it is neither necessary nor desirable for this Court to submerge itself in a point-by-point review of every decision made by the lower courts en route to this one. Justice Sundberg, writing for the Court in Matthews v. State, 363 So.2d 1066 (Fla. 1978), stated that the Florida Supreme Court should not grant discretionary review in cases where the lower court employed a correct application of the law to record facts, regardless of the existence of other evidence or the Supreme Court's disagreement with the outcome. This is analogous to the contemporaneous decision in Tibbs v. State, 397 So.2d 1120 (Fla. 1981), prohibiting appellate reweighing of evidence.

While Craft may disagree with the trial court's assessment of the evidence as it related to issues of abandonment and reasonable

expectations of privacy, he has not alleged, nor has he shown, that the trial court failed to recognize and apply controlling United States Supreme Court precedent (as required by the Florida Constitution) or that there is not competent, substantial evidence to support the lower courts' decisions.

The trial court found to its satisfaction, based upon the testimony adduced, that the defendant had no reasonable expectation of privacy in his mother's garbage can, which had been placed outside of her fenced-in yard. Both federal and Florida courts have long recognized that the act of placing items in a garbage bag or can, so the items can be removed by others, is an act of abandonment which divests the owner of any expectation of privacy. See United States v. Vahalik, 606 F.2d 99 (5th Cir. 1979); State v. Slatko, 432 So.2d 635 (Fla. 3rd DCA 1983); Stone v. Florida, 402 So.2d 1330 (Fla. 1st DCA 1981); State v. Fisher, 591 So.2d 1049 (Fla. 5th DCA 1991) Whether Craft likes it or not, the search was appropriate. California v. Greenwood, 486 U.S. 35 (1988): see also, California v. Hodari, 499 U.S. 621 (1991)(governing abandoned property).

This brings us back to the Matthews case. The trial court did not make an arbitrary, capricious or wholly unfounded determination of abandonment or the loss of any expectation of privacy. The District Court of Appeal, in turn, did not violate its Constitutional obligation to follow controlling Fourth Amendment precedent. Similarly, this Court should reject Craft's argument that it should do so.

ISSUE III

DID THE TRIAL COURT ERR BY DENYING THE MOTION TO APPOINT NEW COUNSEL? (Restated)

As noted before, the First District Court of Appeal is the court of final appellate jurisdiction, and discretionary review should not be granted just because a dissatisfied defendant wants to argue his interpretation of the transcripts or the wisdom of some discretionary decision. Matthews, supra.

The real issue, as argued to the First District, was not the question of "substitution of counsel" but rather the alleged failure of the trial court to warn the defendant of the dangers of self-representation. At no time did the defendant state any desire to proceed without counsel. At most, Craft moved for leave to act as his own co-counsel, making it clear in the process that he wanted the assistance of an attorney and did not want to proceed alone.

The issue which the defendant fails to address is the fact that he was not entitled to "Faretta" warnings in the absence of an unequivocal request to proceed without the assistance of an attorney. Faretta v. California, 422 U.S. 806 (1975); Smith v. State, 641 So.2d 1319 (Fla. 1994); Valdes v. State, 626 So.2d 1316 (Fla. 1993) Thus, given the record support for the trial court's

actions, the absence of any indication of a desire on Craft's part to proceed without counsel, and the clear legal support for the proposition that warnings were not required, there is no basis for review or relief.

ISSUE IV

DID THE TRIAL COURT ERR BY ADMITTING, WITHOUT OBJECTION, COLLATERAL CRIME EVIDENCE? (Restated)

The question of whether the evidence regarding the murder charge was a "feature of the trial" was not preserved for review and should not be granted discretionary review even though the District Court found the issue "meritless", without discussion. The District Court in referring to the issue, in general conjunction with other issues, as "meritless", rendered the equivalent of a "PCA" decision on a point which does not preclude reliance upon this Court's well established procedural default rule. See Steinhorst v. State, 412 So.2d 332 (Fla. 1982); Freeman v. State, 563 So.2d 73 (Fla. 1990)

The (unpreserved) argument itself reflects a lack of familiarity with the difference between "Williams Rule" evidence and evidence of other crimes that is admissible outside the rule due to the "intertwined" nature of the evidence. This Court discussed this issue in Griffin v. State, 639 So.2d 966 (Fla. 1994); See Sec. 90.402, Fla.Stat. The murder evidence at bar was hopelessly intertwined with the issue of "possession of a firearm by a convicted felon". The trial court gave a requested, limiting, instruction to the jury, and the First District Court of Appeal

found no merit to the issue. Under Matthews, supra, there is no basis for review or relief on this unpreserved claim.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the affirmative, and that review or relief should not be granted on the collateral issues raised by Respondent in his cross-petition.

Respectfully submitted,

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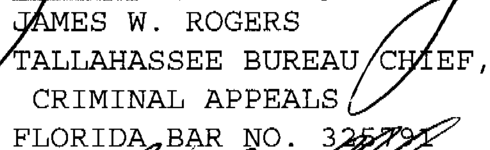

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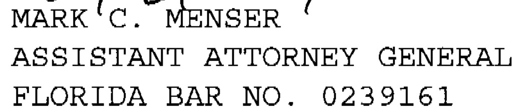

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY BRIEF ON THE MERITS has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Esq.; Assistant Public Defender; Leon County Courthouse, Suite 401, North; 301 South Monroe Street; Tallahassee, Florida 32301, this 24 day of June, 1996.

Mark C. Menser
Assistant Attorney General

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