

IN THE SUPREME COURT OF FLORIDA

SUSAN STATEN a/k/a
SUSAN ANN STATEN,

Petitioner,

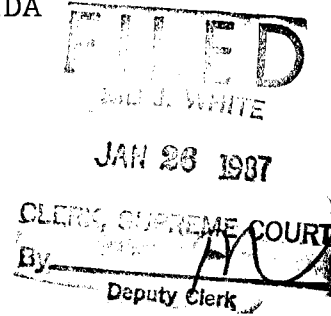
vs.

STATE OF FLORIDA,

Respondent.

Case No.

69,899



DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

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TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

Petitioner, SUSAN STATEN, was the Appellant in the Second District Court of Appeal and the Defendant in the trial court. Respondent, the State of Florida, was the Appellee in the Second District Court of Appeal. The appendix to this brief contains a copy of the decision rendered December 23, 1986, and a copy of an appellant brief filed in the Third District Court of Appeal.

STATEMENT OF THE CASE

On April 16, 1984, the State Attorney in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, filed an Information against the Appellant, Susan Staten, charging Ms. Staten with three counts of Accessory after the Fact occurring on February 7, 1984, contrary to Florida Statute 777.03. On December 12, 1984, the State Attorney filled an Indictment charging Ms. Staten with First Degree Murder contrary to Florida Statute 782.04, Armed Robbery contrary to Florida Statute 812.13(2)(a), and Aggravated Battery contrary to Florida Statute 784.045, all of which occurred on February 7, 1984. From March 18 through March 22, 1985, Ms. Staten had a jury trial with the Honorable Harry Lee Coe, III, Circuit Judge, presiding. On March 22, 1985, the jury deliberated and returned verdicts finding Ms. Staten guilty of Second Degree Murder and guilty as charged on the remaining five counts.

On May 3, 1985, Judge Coe sentenced Ms. Staten as follows: on the Second Degree Murder charge - 99 years of imprisonment, jurisdiction retained over 1/3, and credit for time served given; on the armed robbery charge - 99 years of imprisonment, jurisdiction retained over 1/3, and credit for time served given; on the aggravated battery charge - 15 years of imprisonment, jurisdiction retained over 1/3, and credit for time served given; on the three accessory after the fact charges - 5 years of imprisonment on each and credit for time served given. The 5-year sentences for the accessory charges were to run concurrent with each other and con-

current to the aggravated battery sentence; however, those sentences imposed on the second degree murder charge, the robbery charge, and the aggravated battery charge were to run consecutive to each other. A Motion for New Trial was timely filed and denied. Ms. Staten timely filed the Notice of Appeal on all charges on May 31, 1985.

On appeal Ms. Staten attacked three areas: (1) prejudicial comment made by a State witness referring to an unrelated offense committed by Ms. Staten, (2) sentencing errors, and (3) convictions for being an accessory after the fact as well as for being a principal. In its opinion the Second District Court of Appeal rejected all but the sentencing errors.

STATEMENT OF THE FACTS

On February 7, 1984, a drug dealer named William Huggins was shot and killed. At the time of the shooting, Mr. Huggins was being robbed by a Ronnie Upshaw, Larry McPaul and Michael King, two of which had guns. According to Mr. Upshaw, who testified for the State in return for leniency, the robbery of drug dealers was discussed on prior occasions and on the night in question by Ms. Staten, Mr. McPhaul, Mr. King and himself. According to Mr. Upshaw, Ms. Staten stayed with the car and drove away after the shooting occurred. Another witness at the scene also identified Ms. Staten as the driver of the "getaway" car. Three witnesses testified that Ms. Staten was playing cards with them on the night in question.

SUMMARY OF ARGUMENT

Ms. Staten argues that the Second District Court of Appeal's decision in this case finding that a defendant can be convicted both as a principal and accessory after the fact for the same act conflicts with the Third District Court of Appeal where a contrary decision was reached.

ARGUMENT

WHETHER THE DECISION IN STATEN V. STATE, CASE NO. 85-2194 (FLA.2D DCA DECEMBER 23,1986)[12 F.L.W. 72], IS IN CONFLICT WITH MAQUIERA V. STATE, 494 SO.2D 292 (FLA.3D DCA 1986), AS TO WHETHER A PERSON CAN BE CONVICTED FOR BOTH PRINCIPAL AND ACCESSORY AFTER THE FACT FOR THE SAME CRIME?

Ms. Staten was charged, convicted and sentenced for her part in a first-degree murder charge, armed robbery, aggravated battery, and three counts of accessory after the fact. The accessory after the fact charges arose out of those charges Ms. Staten was convicted and sentenced for as a principal. The recent case of Maquiera v. State, 494 So.2d 292 (Fla.3d DCA 1986), was faced with an identical situation and held the following: "In legal and logical contemplation, as to a single offense of attempted robbery, the principal offender and the person giving aid to the offender afterwards cannot be one and the same."

In its opinion in Staten, the Second District Court of Appeal tried to distinguish Maquiera and held it only applies where there is only one perpetrator involved in the crime. This assumption in the facts is unsupported by the opinion in Maquiera, for there is nothing in the opinion that states that Maquiera was alone or had co-defendants. This assumption that Maquiera was alone is also unsupported by the actual facts, for Mr. Maquiera did have co-defendants (see attached Appendix B, Appellant's brief on Maquiera v. State, Case No. 85-1729). Finally, this assumption is ludicrous; for the situation is unimaginable where one person would commit a

crime and then also be charged with helping himself escape. If such a situation could exist, then all persons committing crimes would be guilty of being an accessory after the fact if they did not immediately turn themselves in.

By upholding Ms. Staten's three accessory-after-the-fact convictions and sentences, the Second District Court of Appeal conflicted with the Third District Court of Appeals's decision in Mcquiera. This Court should accept jurisdiction in order to settle this conflict.


CONCLUSION

In light of the foregoing reasons, arguments and authorities, Petitioner has demonstrated that conflict does exist with the instant decision and the Third District Court of Appeal so as to invoke discretionary review of this Court.

Respectfully submitted,

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