

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	CRIMINAL ACTION NUMBERS
)	
v.)	IN-92-01-1144-R1 thru
)	IN-92-01-1148-R1
JACK OUTTEN)	
)	ID NO. 92000786DI

Submitted: February 1, 2008

Decided: February 29, 2008

MEMORANDUM OPINION

Upon Motion of the State Reargument - DENIED

Appearances:

James B. Ropp, Esquire, and Ipek K. Medford, Esquire, Deputys Attorney General, Department of Justice, Wilmington, Delaware, attorney for State of Delaware

Jennifer-Kate Aaronson, Esquire, and Natalie S. Woloshin, Esquire, of Woloshin Lynch Natalie & Gagne, Wilmington, Delaware, attorney for defendant

HERLIHY, Judge

The State moves for reargument of the Court’s decision granting defendant Jack Outten’s motion to vacate his felony murder conviction. In its January 9, 2008 opinion, the Court held that Outten’s conviction must be vacated in light of the Delaware Supreme Court decision in *Williams v. State*¹ and its progeny .

Applicable Standard

Under this Court’s Criminal Rules, there is no provision regulating motions for reargument. In that instance, therefore, the appropriate Civil Rule applies.² Necessarily that means that the standards for motions for rearguments also apply. Under Civil Rule 59(e) motions for reargument, the “only issue is whether the court overlooked something that would have changed the outcome of the underlying decision ”³ or made an error of law.⁴ Generally, reargument will be denied unless the underlying decision involved an abuse of discretion.⁵ Finally, “[a] motion for reargument is not intended to rehash the arguments already decided by the court.⁶

¹ 818 A.2d 906 (Del. 2003).

² Superior Court Criminal Rule 57(d). That means that Civil Rule 59(e) applies also.

³ *McElroy v. Shell Petroleum, Inc.*, 1992 WL 397468 (Del.).

⁴ *Steadfast Ins. Co. v. Eon Labs Mfg., Inc.*, 1999 WL 743982 (Del. Super.).

⁵ *McElroy*, 1992 WL 397468 (Del.).

⁶ *Id.*

Parties' Contentions

The State contends that Outten's felony murder conviction was proper under the law as set forth in *Williams*. First, the State takes issue with the Court's reliance on the facts as set forth in its 1993 Sentencing Decision. Specifically, the State argues that if permitted to expand the record with "specific transcript references" the facts in this case would clearly support the felony murder conviction. Second, the State contends that the Court applied "a standard of proof that was contrary to the standard set forth" in *Williams*.

The State alleges that in its opinion, the Court "requires proof, 'that the murder was a necessary part of or a step needed by the three young men to rob an older intoxicated person.'"⁷ This language, according to the State, was used in *Hassan El v. State*⁸ in the section of the opinion discussing the attempted robbery charge and, therefore, does not apply to felony murder. The State goes on to describe the correct standard in reviewing a felony murder conviction as "whether considering the evidence in the light most favorable to the prosecution, including all reasonable inferences to be drawn therefrom, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."⁹ The State points out that this standard is not mentioned in the Court's prior opinion. Finally, upon review of the facts surrounding Mannon's death as recalled

⁷ Motion ¶ 2 quoting *State v. Outten*, 2008 WL 100117 at *3.

⁸ 911 A.2d 385 (Del. 2006).

⁹ Motion ¶ 4 citing, inter alia, *Williams*, 818 A.2d at 910.

by the State, it submits that under the above standard Outten's conviction should stand.

Outten responds by asserting that the Court's decision was appropriate in light of the *Williams* decision. First, he points out that the Court found the facts in its previous Sentencing Decision to be "instructive," that does not mean, as suggested by the State, that was the *only* portion of the factual record that the Court relied upon in making its decision. Second, Outten cites portions of the record which, he contends, supports the Court's finding that there was insufficient evidence to support a felony murder conviction in this case. Third, he contends that the State misread the Court's opinion with regards to whether the Court applied the correct legal standard and that, therefore, the legal standard applied was correct.

Discussion

A

The State initially takes issue with the Court's recitation and reliance upon the facts contained in its April 30, 1993 Sentencing Decision. The State contends that "[w]hile the facts recited in the Sentencing Order are accurate, the Order does not relate all the facts and circumstances in the voluminous record which were elicited over the multi-week trial."¹⁰ It appears that the State is arguing that the Court "overlooked" relevant facts and circumstances which would have "changed the outcome of the underlying decision." Without actually providing any relevant portions of the record in support of this argument,

¹⁰ State's motion ¶ 1.

the State conclusively states that the facts show “an intent to commit Robbery, and that the Murder was committed in the course of, and in furtherance of, the Robbery First Degree.”¹¹ The State does not request the opportunity to “expand the record.”

The Court deems it unnecessary to allow the State to “expand the record” for two reasons. First, it is unclear to the Court why the State would not indicate in its Motion what portions of the record, if considered, would have changed the Court’s decision. Second, the State, nevertheless, does provide facts in the portion of their Motion arguing that the Court applied the wrong legal standard.¹² Those facts, it alleges, support the jury’s felony murder conviction and, in turn, negate the Court’s prior decision. Therefore, those facts will be considered with regard to the State’s argument that the Court overlooked relevant facts and circumstances in rendering its initial decision, which, if considered, would have changed that decision.

The relevant facts, which the State alleges would have changed the outcome of the underlying decision, are: (1) evidence that Outten and the others discussed committing a robbery earlier in the day of Mannon’s murder, (2) evidence that Outten had committed a robbery earlier in the day, (3) evidence that Mannon was “openly” wearing jewelry on the night of the murder that Outten must have seen, (3) evidence that Mannon’s pockets had been turned out, that his wallet was found some distance from the body, and that

¹¹ State’s Motion ¶ 1.

¹² State’s Motion ¶ 4-5.

contents of the wallet were found some distance from the wallet, (4) no evidence, as recalled by the State, of any other motive to kill Outten besides to facilitate robbing him, and (5) evidence of Gibbon's statement that Mannon did not have money can be negated by the fact that he was wearing jewelry which presents a motive to rob.

It is important to point out that the only evidence now argued by the State which the Court did not expressly consider is the fact that Mannon was "openly" wearing jewelry on the night of the murder. As the State should have read in the underlying opinion, the Court considered the robbery committed earlier on the day of Mannon's murder to cut against a finding of felony murder. This is because Outten did not kill or harm the victim of the previous robbery, which negates that he would have needed to kill Mannon to rob him. It appears that the essence of the State's argument is that it simply does not agree with the inferences drawn by the Court from the evidence in the record. That, however, is not an appropriate consideration in a motion for reargument.¹³ Therefore, the Court will not upset its underlying decision on that basis.

As mentioned above, the only fact asserted by the State not specifically addressed in the Court's opinion is that Mannon was wearing jewelry. This fact, even if "overlooked," would not change the Court's decision. This is because the other evidence in the record, as the State urges the Court must consider, suggests a lack of intent to rob

¹³ See *Kennedy v. Invacare Corp.*, 2006 WL 488590 (Del. Super.).

Mannon.¹⁴ The simple fact that he was wearing jewelry does not outweigh the other facts considered dispositive by this Court in making its decision. Therefore, the Court is not compelled by that fact to change its decision.

B

The State's next argument is that the Court failed to apply the correct legal standard in its consideration of Outten's motion. The correct standard, according to the State, is "whether considering the evidence in the light most favorable to the prosecution, including all reasonable inferences to be drawn therefrom, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹⁵ The State contends that the standard applied by the Court was "contrary" to the correct standard as set forth above. To support its argument the State points to language in the opinion in which the Court allegedly "requires that the murder be a 'necessary' part or step..."¹⁶ in the process of committing the felony.

The Court was not, as alleged by the State, applying a "contrary" legal standard when it used the above quoted language. In using that language, the Court was simply applying the analysis of *Hassan El* to the unique facts presented by this case. As the State is most likely aware, a case like this one, an "afterthought" robbery, is one which the

¹⁴ The "lack of intent to rob" is discussed more fully in Section B of this opinion.

¹⁵ State's motion ¶ 4.

¹⁶ State's Motion ¶ 2 quoting *State v. Outten*, 2008 WL 100117 (Del. Super.).

Court has not been confronted until now. Based on that, the Court must do its best to extend the reasoning as used in previous cases, cases which do not present a perfect “fit” here because of the unique facts presented.

The Court is compelled to further clarify its application of *Hassan El* to this case. In that case, defendant was convicted of felony murder and the underlying felony was an attempted robbery. He challenged his conviction based on the holdings in *Williams* and *Chao II*.¹⁷ The defendant argued that the killing could not have been “in furtherance” of a robbery that was not actually ever carried out. In upholding his conviction, the court found dispositive the fact that there was evidence in the record supporting a jury finding of an intent to rob *before* the killing occurred. Specifically, the Court relied on the fact that the defendant approached an ice cream truck with his face covered, was carrying a handgun, and had fired the weapon immediately upon reaching the ice cream truck. In finding such evidence of an intent to rob, the Court concluded that the killing was in furtherance of the intended robbery, even though the defendants had abandoned the scheme before actually completing such robbery.

In the present case, it is clear from the record that Outten robbed Mannon. There was evidence at the scene that Mannon’s jewelry had been taken from his body and that his wallet had been gone through. However, the evidence the Court found lacking was that of an intent to rob Mannon *before* the killing occurred. As was stated in the facts of the

¹⁷ *Chao v. State*, 931 A.2d 1000(Del. 2007)(applied *Williams* retroactively).

1993 Sentencing Order “[a]fter Mr. Mannon was murdered, his rings and wallet were removed.”¹⁸ The Court found that this, and other evidence in the record, compelled a reversal of the felony murder conviction. This is because, based on the unique facts of this case, a rational juror could not have found, beyond a reasonable doubt, that the murder of Mannon was to “move along” the robbery. The Court believes this result is not “rational” where, as here, the evidence so clearly compels the conclusion that an intent to rob was not formed until *after* Mannon was killed. Therefore, negating an essential element of felony murder, an intent to commit the underlying felony.

This Court in *State v. Outten*¹⁹ explored a new facet of the felony murder “progeny” as begun in the *Williams* decision. The facts presented in this case represent a new situation in which a felony murder conviction cannot stand.

Conclusion

In conclusion, for the reasons stated herein, the State’s Motion for Reargument of the Court’s opinion vacating Outten’s felony murder conviction is **DENIED**.

J.

¹⁸ See *Outten v. State*, 2008 WL 100117 (Del. Super.).

¹⁹ 2008 WL 100117 (Del. Super.).