



RICHARD EDWARD MCCAFFREY v. STATE FLORIDA

209 So. 2d 237 (1968) | Cited 0 times | District Court of Appeal of Florida | April 11, 1968

BARNS, PAUL D., Associate Judge.

After being convicted of conspiring to commit an aggravated assault, the defendants appealed. We affirm.

Appellants' attorney has failed and neglected to copy into his brief the assignment of error relied on for reversal; however, his third point comes within the scope of the fifth assignment, viz.: that the court erred in not granting the defendants' motions for a directed verdict.

These defendants and others were charged on an information of conspiring, confederating and combining to commit murder in the first degree of Miguel Angel Rivera, which resulted in the death of eleven-year-old Catalina Flores, under the circumstances hereinafter stated.

James Purkhiser and Charles Smith together with their two young girl companions were returning to Broward County after a day's trip on two motorcycles to Palm Beach when Purkhiser took offense at Rivera exposing him to danger when Purkhiser and Smith passed the automobile being driven by Rivera. After Purkhiser stopped Rivera they had some harsh words, and they then followed Rivera to a store near the Pompano Beach Labor Camp. There Rivera pulled a gun on Purkhiser and then retreated, after which Purkhiser and Smith were beaten up by Rivera's friends. Purkhiser had previously threatened further trouble to Rivera at the time of the highway encounter. When Purkhiser and Smith appeared at the store, where they were beaten by others, Rivera pulled a gun on them and escaped. Hence, it became known that Rivera was not without a gun.

Next Purkhiser and Smith (and the girls) went to La Bella's Bar after a deputy sheriff broke up the fight at the store. Purkhiser made a telephone call; thereafter, John Luke and Paul Mahoney arrived at La Bella's. Luke and Gerry Fields went to Richard McCaffrey, Jr's. house and woke him up, telling him that the Puerto Ricans had beaten Purkhiser and Smith, and they "were going back up there." At this time Howard Geer and Robert Walker arrived on Geer's motorcycle and wanted to know what was going on. Gerry (the girl) testified that she "told them". Luke, Geer, Walker and Gerry returned to La Bella's, (Gerry having picked up a baseball bat and a billy club at McCaffrey's), where they were joined by Frank Kirby and Bill Harbour. When back at La Bella's, McCaffrey joined them. Adron Chambers, who owned the Dodge paneled truck, was there and it was driven away from La Bella's Bar by John Henry with at least eleven men and two girls. According to Gerry Fields, when asked what Henry (the driver) had said as to what he intended to do, she answered:



RICHARD EDWARD MCCAFFREY v. STATE FLORIDA

209 So. 2d 237 (1968) | Cited 0 times | District Court of Appeal of Florida | April 11, 1968

"A. He said he was going back and get those Puerto Ricans. This is what everybody was saying except Kirby and Bill Harbour. He was drunk. He even asked me to hold his teeth for him."

She further testified that Charles Smith had said he did not want to go, but he went. "Everybody else wanted to go". McCaffrey was still half asleep and wanted to know "what is it all about", and John Luke told him that "we were going to get some Puerto Ricans." John Henry, who drove the truck, did most of the talking; and in answer to what he said, Gerry testified:

"A. He said that nobody was going to get away with beating up Chuck and Jimmy and he was going up there and kill those sonofbitches for doing that."

From La Bella's Bar the truck was driven to Roy Griffin's house with Luke following on a motorcycle. Roy Griffin and John Luke then got into the truck with Luke bringing a tire iron. Next, they went to Ray Stidham's house to "get his gun and him"; Stidham got into the truck with Jimmie Gallagher.

Roy Griffin had a revolver, and Geer and Walker had knives. With seventeen in the truck, they then returned to the store where Purkhiser and Smith had been beaten. There they met a colored man who took them to what he designated as the home of Miguel Rivera, where the truck stopped. At this time, Smith, Chambers, Wagner (a girl), McCaffrey, Malone and Gerry Fields (six in number) stayed in the truck and the others got out; Purkhiser (with a pistol), Stidham, Luke, and Henry (with an axe) went to the front door of the house. Roy Griffin went into the yard; Kirby, Walker, Geer and Harbour stood at the back of the truck.

All except three of the above-described gang were members of the "Iron Cross Gang". The house pointed out as Rivera's was in a labor camp but was not Rivera's house; it was the house of Tito Flores. When his daughter, Catalina Flores, and Luis Navarro were in the living room watching television, Purkhiser (backed by Stidham, Luke and Henry) pulled open the front screen door to the living room confronting Navarro with a drawn pistol, making inquiry of whether Navarro recognized him. Navarro advised him he had never seen him before. Then Tito Flores appeared from the dark at the door of an adjoining bedroom and inquired in Spanish as to what was going on. At this time, Catalina ran from the living room to the bedroom. Purkhiser shot twice, one of which shots hit Catalina causing her death.

The gang had a clear understanding that Purkhiser was to have "a fair fight" with Rivera and none were to interfere unless the Puerto Ricans did. It is clear that Purkhiser wanted revenge and intended to beat up Rivera, and it clearly is plausible that he shot at Tito, thinking him to be Rivera, who he knew to possess a pistol because of the trouble earlier at the store.

F.S.1967, Section 833.04, F.S.A., provides that "[if] two or more persons shall agree, conspire, combine or confederate to commit any other felony they shall be guilty of a felony", and F.S.1967, Section 784.04, F.S.A., provides that, "[whoever] assaults another with a deadly weapon, without intent to kill,



RICHARD EDWARD MCCAFFREY v. STATE FLORIDA

209 So. 2d 237 (1968) | Cited 0 times | District Court of Appeal of Florida | April 11, 1968

shall be guilty of an aggravated assault and shall be punished by imprisonment in the state prison not exceeding five years", thereby making aggravated assault a felony.

It seems clear the appellants and the members of the gang agreed, conspired, combined and confederated to assault Rivera with a deadly weapon, since they were armed with two pistols, a tire iron, a baseball bat and a billy club, and in furtherance of the conspiracy went looking for Rivera.

The judgments appealed from are affirmed.

Affirmed.

WALDEN, C.J., and CROSS, J., concur.

