

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed November 19, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-1274
Lower Tribunal No. 04-16767

Davis Dorvil,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ellen Sue Venzer, Judge.

Bennett H. Brummer, Public Defender, and Gwendolyn Powell Braswell, for appellant.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, Assistant Attorney General, for appellee.

Before COPE and RAMIREZ, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

On this appeal from a conviction and maximum sentence for second degree murder of the defendant's wife, we first find no error in the trial court's failure to

suppress the murder weapon which was found after Dorvil revealed its location to the police. See *Oregon v. Bradshaw*, 462 U.S. 1039 (1983); *Edwards v. Arizona*, 451 U.S. 477 (1981); *Stein v. State*, 632 So. 2d 1361 (Fla. 1994).

The sentence, however, is vacated, and the cause is remanded for resentencing by another judge, see *Johnson v. State*, 948 So. 2d 1014 (Fla. 3d DCA 2007), because, as in Johnson, the lower court obviously and erroneously took the defendant's refusal to admit responsibility into consideration in determining the sentence. See *Johnson*, 948 So. 2d at 1016-17; *Soto v. State*, 874 So. 2d 1215 (Fla. 3d DCA 2004); *A.S. v. State*, 667 So. 2d 994 (Fla. 3d DCA 1996).

Affirmed in part, vacated in part and remanded.