

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2060

RAYMOND ANTHONY ROMERO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Santa Rosa County.
Darlene F. Dickey, Judge.

August 19, 2020

PER CURIAM.

AFFIRMED.

LEWIS and BILBREY, JJ., concur; B.L. THOMAS, J., concurs with
opinion.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

B.L. THOMAS, J., concurring.

I concur in affirming the trial court's order on resentencing which re-imposed a life sentence for Appellant's brutal crime of murdering his eighteen-year old acquaintance, Shon Peardon, in Gulf Breeze when Appellant was fifteen years old. The murder was heinous, atrocious, and cruel, and it was committed with premeditation to steal the victim's car and money. There is no doubt that Appellant committed the murder based on Appellant's own admissions, DNA evidence, witness testimony, and other evidence. This Court did not issue a written opinion in its affirmance of Appellant's previous life sentence. *See Romero v. State*, 699 So. 2d 1378 (Fla. 1st DCA 1997). Because the issue here involves a juvenile who was previously sentenced to a mandatory term of life imprisonment for first-degree murder, and the facts and law merit a written opinion, I write to address Appellant's argument in this appeal that he should not have received a discretionary life sentence under *Miller v. Alabama*, 567 U.S. 460 (2012) and section 921.1401(2), Florida Statutes (2014).

I also write to note the impact of Appellant's crime on the young victim's family. The victim's father told the court, "I loved my son with all my heart. Myself and my family will suffer *every minute, every day, the rest of our lives at the horror and the violence that they inflicted upon him*. Shon will be missed by everyone. Shon was shown no mercy." Appellant and his brother attacked the defenseless victim with a knife and hatchet, splattering the young man's blood all over the car, shattering his skull, and slicing part of the victim's thumb off when he desperately tried to stop the blows.

Marijuana, Robbery, and Murder

In 1995, Appellant fled from Michigan, where he was found to be in possession of a gun while under court-ordered supervision. He had engaged in criminal behavior since he was ten years old. Despite repeated attempts by state authorities, Appellant continued to commit crimes until Appellant and his brother fled to Gulf Breeze to live with their cousin and family members. After ten days in Florida, Appellant became bored and decided he would rob someone to get money for a bus ticket back to Michigan.

He discussed this “master plan” with his brother and cousin. Appellant also discussed killing a victim with his friends, telling them that Appellant “would do the killing” and his brother would “do the beating.”

The opportunity arose when the victim, Appellant, and Appellant’s friends spent the evening in a local club. The victim had earned money working at a boat-lift facility, and he paid for Appellant’s brother and two other co-defendants to enjoy themselves at the club. Everyone knew the victim had about \$300, in addition to his own car, which he had worked to purchase. The victim, Appellant, his brother, and the co-defendants left the club and returned to Appellant’s cousin’s home, where they smoked the victim’s marijuana. Later that night, the victim let one of the co-defendants drive his car to take a friend home. The co-defendant then returned the victim’s car, and the victim slept in the car parked on the street near Appellant’s cousin’s home. One of the co-defendants suggested that Appellant and his brother could “tie the victim up” and “knock him out” with a brick or a hatchet, take the victim’s car and money, and return to Michigan.

To help Appellant commit the crime, his cousin provided him with a fillet knife and Appellant and his brother obtained a hatchet from the back yard. Appellant and his brother then approached the victim, who was asleep in his car. A co-defendant later told Michigan authorities that he saw the victim’s head moving back and forth and heard loud noises while the victim was assaulted. Another co-defendant testified that he saw Appellant and his brother repeatedly striking the victim’s head and heard loud thuds.

Appellant first stabbed the victim in the neck with the fillet knife which partially cut the victim’s carotid artery and awakened the victim. But this first attack did not immediately cause the victim’s death, as the State’s pathologist and District Medical Director testified:

When I dissected the tissues, I was able to find that [the stab wound] went about one and a half inches into the neck, downward and forward a little bit. The significance of this area, on the side of the neck is that this [is] where some of the major blood vessels in the neck are. See this

is on the side of the neck, and when I traced this down, I found that the carotid artery and the jugular vein, which [are] the two major blood vessels in the neck, that travel to the brain and the face, *were punctured by the knife causing a large amount of blood in the neck*, if you can see, perhaps, maybe, the neck is swollen, there, a little bit, and a little bit red. *And when I opened that there was, probably, maybe, a half a pint of blood in that area that had come from the punctured blood vessel; so, this was a very serious wound.*

Q: Was this wound a fatal wound?

A: It was potentially a fatal wound, but the blood vessels were not entirely severed, they were just punctured; there was a pinpoint puncture in the blood vessels which wasn't bleeding profusely, *did not cause death instantaneously, but could very well cause death over time.*

(Emphasis added.)

Appellant then used the hatchet to complete the murder. Appellant and his brother "took turns" striking the victim in the face and the head with both sides of the hatchet. The pathology expert further testified that the facial wounds from the hatchet, which was recovered, were severe and "quite large":

Yes, there's basically two types of wounds, here, you can see in the photographs. These are the sharp force trauma, and you can see this is consistent with the sharp pointed end of the hatchet blade. The blades did not contact the entire area with the same degree of force, so you see this tag on the end would be from where the blade came down with less force on that area. It came down here *right on the bone of the jaw and back here*, it wasn't as much contact. *This is entirely consistent with a hatchet type wound.* Here's another wound just like it, except there were two blows struck here. There is one here, and there's one here. So, that's actually two blows, one right on top of the other; and when we felt that jawbone *there*

was a complete fracture across the jawbone, right, there, due to the blow of the hatchet.

....

Yes, we can move to the next photograph, and look at this one in more detail to see evidence of type of effect, the sharp blows with the sharp part of the ax, which are long and deep; and then the ones that are -- have a square like abrasions, you can see -- you can take that square top on that hatchet could be matched up with this square abrasion right here and since there's bone underneath, the skin splits forming this triangular type of abrasion or irregular, some look like triangles, some look like F's or E's, different shapes depending on how the skin split, but they all have this kind of a squared-off effect; this is entirely consistent with having been struck, multiple times by the back of that hatchet.

And, now, these wounds [are] very serious, *very severe wounds*. This one, *cuts the end -- the tip of the ear off, and this was delivered by a sharp instrument* consistent with a hatchet. And that was the little bone behind the ear called the mastoid bone that sticks down, and this was actually amputated by the force of this blow to the ear, as well as, the tip of the ear being chopped off. You can see where it's just hanging there. Then another very strong blow here, and then, these are very deep, very strong chops, that go all the way down into the tissues of the neck.

....

But these are very deep and very severe blows. This one is a blow that hits the jaw bone; it goes down into the jaw, a fracture beneath this wound *and it was so severe that you actually had a secondary fracture*, this bone here fractured in the course of the travel down the jaw, here, *and there was actually another fracture down here in the chin area, caused by that same blow.*

....

Now, these wounds were in the back of the head, and there are multiple *deep chop wounds* that are similar to the ones that I described on the side of the neck . . . *And these are so deep that they actually cut out part of the bone or leave holes in the bone, sharp points of the hole caused by an ax or hatchet.* . . . Basically, I'm just telling that these blows were caused by the axe, causing injury to the skull, skull fracturing. Also, I neglected to mention *that some of the blows on the side of the head here, caused fractures, fracturing of the skull and injury to the underlying brain tissue.* So the blows on the skull are caused by this blunt end of the ax and had a somewhat *devastating effect on the underlying brain tissue.* . . . This is a large chop wound on the top of the head. And underlying this, there was a piece of the skull that had been chopped out. *It had sort of been cut out by the force of the blow.*

(Emphasis added.)

The pathology expert also testified that the hatchet had partially severed the victim's left thumb. That partial amputation and the other injuries to the victim's hands and wrists were consistent with "defense wounds" sustained in the victim's desperate attempt to save his life from the hatchet blows to his face and head. The pathology expert ascertained that the victim died from the knife wound and massive injuries from the hatchet:

Q: Are you able to tell . . . how many times the victim in this case was struck with a hatchet or an object like a hatchet?

A: *At least 30 times on the head and neck area.*

Q: And as a result of the autopsy and your investigation into this matter, have you been able to ascertain the cause of death?

. . . .

A: Well, the cause of death was the multiple wounds caused by the blunt trauma, sharp trauma and stab wounds.

(Emphasis added.)

After Appellant and his brother stabbed and beat the victim to death, they rushed into the cousin's bedroom, told the co-defendants to grab their clothes, and the four fled to Michigan in the victim's car. They tried to wipe away the victim's massive bloodshed from the car's interior. During the drive to Michigan, Appellant and the others continued to smoke marijuana. Appellant called (and later wrote) a former friend, bragging about committing the murder.

After the victim's body was discovered in a nearby street, law enforcement quickly identified the victim's car and alerted Michigan authorities that the car was likely being driven to that state. According to a co-defendant, who was also later convicted of murder and sentenced to life imprisonment, as was Appellant's brother, Appellant expressed no remorse whatsoever about murdering the victim during their short-lived escape in the victim's car. The group smoked marijuana, bought gas for the car, and desperately attempted to throw the victim's papers and other evidence out of the car before and during the pursuit. Michigan authorities identified the car soon thereafter and pursued Appellant and his co-defendants in a high-speed chase that reached speeds greater than 125 miles per hour. Eventually, law enforcement apprehended Appellant and his co-defendants when the driver crashed the car into a ditch.

At trial, the jury found Appellant and his brother guilty of first-degree premeditated murder, robbery with a deadly weapon, and conspiracy to commit robbery. Appellant received a mandatory life sentence for his murder conviction.

Appellant later moved to correct an illegal sentence and for resentencing on the authority of *Miller*, which prohibited mandatory life sentences for persons who were convicted of committing homicides before they reached the age of eighteen and required individualized sentencing hearings. 567 U.S. 460. The trial court appointed counsel, vacated the mandatory life sentence

based on Appellant's murder conviction, and ordered a resentencing hearing for Appellant.

Resentencing

At the resentencing hearing, the State presented the testimony of Dr. Prichard, an expert witness in forensic psychology and the assessment and evaluation of juvenile criminals. Dr. Prichard testified that he interviewed Appellant in 2017, after he had already served twenty years in state prison. During those two decades, Appellant received forty-seven disciplinary reports. In his interview with Dr. Prichard, Appellant admitted to killing the victim and leading the attack. Appellant described the murder in detail. Appellant stabbed the victim in the neck, and after the victim screamed and started bleeding profusely, Appellant viciously hit the victim with the hatchet to "ensure his death." During his two decades in prison, Appellant gave very little thought as to why he killed the victim, rather than simply incapacitating the victim to steal his car.

Appellant stabbed a fellow inmate early and late in his prison life, demonstrating that he had not rehabilitated himself in any manner. He had been placed in disciplinary confinement for about half the time he had served in state prison, including being placed in Close Management, the highest security level in the Department of Corrections. He was removed from rehabilitation programs for possessing weapons and using drugs in prison.

When asked about Appellant's behavior before he committed the murder, Dr. Prichard testified that it was very poor. Appellant had committed numerous criminal acts as a juvenile. He was detained for his first criminal act at age ten and was repeatedly detained for criminal acts even before he committed the murder.

In sum, Dr. Prichard testified that Appellant's murder of the victim was particularly brutal. And despite facing hardships with an absent father and an ineffectual mother, Appellant engaged in horrific conduct that very few juveniles commit. Most significantly, Appellant's violence and criminality had not changed at all in prison over a period of decades.

Based on Dr. Prichard's testimony, the trial court sentenced Appellant to life in prison for the premeditated murder of Shon Peadon. The court stated that it considered all of the factors required under section 921.1401, Florida Statutes, and that Appellant had now received his required review under section 921.1402 and section 775.082(1)(b)(1), Florida Statutes.

The trial court's sentence is supported by competent, substantial evidence. The life sentence was not an abuse of discretion for this brutal murder of an innocent, eighteen-year old man sleeping in his car, hurting no one, who had done nothing but help Appellant, his brother, and the co-defendants. *See Jackson v. State*, 276 So. 3d 73, 76 (Fla. 1st DCA 2019). The victim died an excruciating, horrific, and violent death because Appellant was bored and wanted to take the victim's car and money back to Michigan, from which he had fled for committing other crimes. The victim's family lost a son who had his whole life ahead of him. The victim's father testified at trial about the never-ending pain and suffering that Appellant's actions inflicted on the living victims of this heinous crime.

The trial court heard extensive testimony from expert witnesses from the state and defense, considered every statutory factor under section 921.1401, Florida Statutes, and provided Appellant with the twenty-five-year review required under section 921.1402, Florida Statutes.

Thus, I concur in the decision to affirm Appellant's life sentence for the conviction of first-degree murder. I also agree we need not address Appellant's arguments regarding the life sentence imposed as an upward departure for the conviction of robbery with a deadly weapon, given the excessive cruelty and violence surrounding this criminal episode. The trial court correctly imposed this sentence, which is subject to review in twenty years.

David J. Joffe, Fort Lauderdale, for Appellant.

Ashley Moody, Attorney General, and Tabitha Herrera, Assistant Attorney General, Tallahassee, for Appellee.