# Third District Court of Appeal

**State of Florida**

Opinion filed January 15, 2020.
Not final until disposition of timely filed motion for rehearing.

---

No. 3D17-2767
Lower Tribunal No. 90-48092B

---

**Ana Maria Cardona,**
Appellant,

vs.

**The State of Florida,**
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Carlos J. Martinez, Public Defender, and Andrew Stanton, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Gabrielle Raemy Charest-Turken, Assistant Attorney General, for appellee.

Before LOGUE, SCALES and GORDO, JJ.

GORDO, J.

Ana Maria Cardona appeals the final judgment of conviction and sentence rendered following her third trial on December 13, 2017. Cardona was charged with and convicted of first-degree murder and aggravated child abuse in the 1990 death of her three-year-old son, Lazaro Figueroa ("L.F."). At trial, the State proffered the testimony of the former Chief Medical Examiner of the Miami-Dade County Medical Examiner's Office, Dr. Bruce Hyma, who examined L.F.'s body on the date it was found.[1] Specifically, Dr. Hyma testified that L.F.'s cause of death was child abuse syndrome. The defense argues this testimony was inadmissible because the "true cause of death" was blunt force injury. The defense contends that Dr. Hyma's testimony was inadmissible because it confused and misled the jurors and forced them to reject the defense theory of the case. We conclude that the trial court did not abuse its discretion in permitting Dr. Hyma's cause of death testimony and affirm.

## FACTS AND PROCEDURAL BACKGROUND

The facts of this case are extensive and are set out in great detail in opinions from the Florida Supreme Court. See Cardona v. State, 185 So. 3d 514, 517–19 (Fla. 2016); Cardona v. State, 826 So. 2d 968, 969–72 (Fla. 2002); Cardona v. State, 641 So. 2d 361, 361–63 (Fla. 1994). This opinion contains only a summary of the facts relevant to the issue on appeal.

[1] This testimony was also part of the State's case in the first two trials.

On November 2, 1990, L.F.'s body was discovered in the yard of a home in Miami Beach. Dr. Bruce Hyma, the medical examiner at that time, examined L.F.'s body and documented his injuries.

Following the discovery of L.F.'s body, it took over a month to identify him. Eventually, the authorities located Cardona who had fled to Orlando with her then-girlfriend and two older children. In the course of police interviews that day, Cardona gave several iterations of what had happened to L.F. One such version was that L.F.'s death had been an accident resulting from a fall from his bed.

At the time of his death, three-year-old L.F. had been victim to years of child abuse and had numerous injuries to show for it. From early in L.F.'s life, Cardona often left him in the care of others. In fact, sometimes Cardona would drop off her son and not return for several months. Because of this lack of continuity in L.F.'s care, Cardona's defense claimed that the systemic injuries were not entirely her responsibility. Further, Cardona alleged that L.F. was not in her care in the weeks and months that preceded his death because she was living in an efficiency where children were not allowed. She contended that her girlfriend had taken L.F. from her to live with a wealthy friend in Miami Beach and that the girlfriend had prohibited her from seeing him again prior to his death.[2] Conversely, the State

[2] There are multiple inconsistencies in her accounts and she later admitted to seeing him for his third birthday, which was shortly before he was murdered.

presented testimony and evidence that L.F. had, in fact, been living in the efficiency with Cardona, her other children, and her girlfriend.

Prior to trial, Cardona's counsel sought to exclude the testimony regarding child abuse syndrome or battered child syndrome.[3] Dr. Hyma's autopsy report stated that the cause of death was "child abuse syndrome." Cardona's defense posited that a blunt force injury to the head was the true cause of L.F.'s death. The defense argued because their case theory was based on an identifiable, discrete, fatal injury, it was inappropriate for the medical examiner to opine otherwise as it negated Cardona's defense.

The trial court denied Cardona's motion in limine concluding that the child abuse syndrome testimony was both relevant and was not more prejudicial than probative. The trial court concluded that the testimony was relevant to prove intent. The trial court also determined that "the evidence of abuse found during [L.F.'s] autopsy is not substantially outweighed by the risk of unfair prejudice, confusion, or misleading the jury." The court then stated that it was "open to suggestions on limiting instructions that it should give the jury to ensure the jury is neither confused nor misled."

[3] Dr. Hyma referred to the syndrome as "child abuse syndrome." Today, the syndrome is commonly known as battered child syndrome.

At trial, Dr. Hyma's testimony from a previous trial was read into the record. Dr. Hyma testified that the blunt injury would have been fatal in and of itself. Still, it was his opinion that despite the blunt injury that sheared L.F.'s corpus callosum and brain stem, the cause of death was battered child syndrome. He went on to opine that although the final brain injury was "sufficient to cause death," it was "not a necessary injury to cause death in this collection of injuries." Dr. Hyma stated that the injuries L.F. sustained since "way, way back in the beginning" culminated in his death because they were left untreated. He stated that the brain injuries were the most recent and "if isolated, would be a fatal injury." He further conceded that the brain injuries would have rendered L.F. unconscious and brought him to the point of death.

A jury convicted Cardona of both first-degree murder and aggravated child abuse, and the court sentenced her to life without parole for twenty-five years followed by fifteen years imprisonment. This appeal followed.

## STANDARD OF REVIEW

"[A]bsent a clear showing of an abuse of discretion, a trial court's ruling regarding the scope of an expert's testimony will not be disturbed on appeal." Russell v. State, 576 So. 2d 389, 392 (Fla. 1st DCA 1991) (citing Ehrhardt, Florida Evidence, § 702.2 (2d Ed.1984)); see also Rodriguez v. State, 413 So. 2d 1303, 1304 (Fla. 3d DCA 1982) ("The decision as to whether expert testimony should be

allowed into evidence rests within the broad discretion of the trial court and will not be disturbed on appeal absent a clear showing of error." (citing Johnson v. State, 393 So. 2d 1069 (Fla. 1980))). "Discretion is abused only 'when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court.'" Trease v. State, 768 So. 2d 1050, 1053 n.2 (Fla. 2000) (quoting Huff v. State, 569 So. 2d 1247, 1249 (Fla. 1990)).

**LEGAL ANALYSIS**

It is well-settled law, and Cardona does not contest, that battered child syndrome testimony is admissible, if relevant, to refute a claim of accidental death. Estelle v. McGuire, 502 U.S. 62, 68–69 (1991). Evidence of battered child syndrome can also be relevant to prove intent. Id. In McGuire, the defendant was charged with the second-degree murder of his six-month-old daughter. Id. at 65. At trial, two physicians testified that she was a battered child and detailed numerous of her prior injuries. Id. Two specific injuries, which the defendant argued could not be connected to him in any way, were used to prove battered child syndrome. Id. at 66.

The Court stated that the physicians' testimony was admissible regardless of the defense strategy not to raise the accidental death theory at trial. "This . . . ignores the fact that the prosecution must prove all the elements of a criminal offense beyond

a reasonable doubt." Id. at 69. "[T]he prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense." Id.

This Court has repeatedly "held that in a child abuse case, reference to prior injuries to the child should be permitted to establish intent and absence of mistake or accident." Evans v. State, 693 So. 2d 1096, 1102 (Fla. 3d DCA 1997) (citing State v. Everette, 532 So. 2d 1124 (Fla. 3d DCA 1988); Mayberry v. State, 430 So. 2d 908 (Fla. 3d DCA 1982)). In Evans, this Court adopted the McGuire Court's reasoning, specifically holding

> that in a case charging the accused with the physical abuse of a child, where the state seeks to present evidence of prior physical abuse committed by the defendant upon the same child for the purpose of proving intent and/or absence of mistake or accident, there is no need for factual similarity between the charged offense and the prior abusive conduct beyond the existence of physical abuse in all instances.

693 So. 2d at 1102.

Florida law permits medical examiners to testify regarding the victim's cause of death. See, e.g., Williams v. State, 209 So. 3d 543, 558–60 (Fla. 2017) (finding that cause of death testimony was admissible where it was within the medical examiner's area of expertise and did not invade the province of the jury); Huck v. State, 881 So. 2d 1137 (Fla. 5th DCA 2004) (finding the medical examiner's cause of death testimony admissible where it was within his area of expertise and based on

his investigation of the circumstances, even though the examiner chose one cause of death over another). In fact, a medical examiner may even render a cause of death opinion that was reached by process of elimination of other possible causes. Huck, 881 So. 2d at 1150 ("[T]here is nothing inherently wrong with coming to a conclusion by use of the process of elimination, and we find no error in the trial court's determination to allow the medical examiner to testify on that basis. The weight to be given to such testimony and its believability are for the jury to decide."); Eierle v. State, 358 So. 2d 1160, 1161 (Fla. 3d DCA 1978). It is inapposite that the medical examiner's testimony contradicts the defense theory of the case. See, e.g., Bedford v. State, 589 So. 2d 245 (Fla. 1991) (medical examiner was permitted to testify that the cause of death was asphyxiation where the defense theory of the case was that the victim's death was accidental).

In this case, it was not an abuse of discretion for the trial court to permit Dr. Hyma to testify that battered child syndrome caused L.F.'s death. "By eliminating the possibility of accident, the evidence regarding battered child syndrome was clearly probative of that essential element, especially in light of the fact that [Cardona] had claimed prior to trial that [L.F.] had injured [him]self by falling from the [bed]." McGuire, 502 U.S. at 69. Despite Cardona's claims on appeal, Dr. Hyma did not opine that the **sole** cause of death was battered child syndrome. In fact, he conceded that either the syndrome or the blunt force injury would have alone been

sufficient to cause L.F.'s death. He testified that it was his opinion that the cause of death was battered child syndrome, which Florida law permits. This opinion was within his expertise and was based on his autopsy of L.F.'s body.

The very purpose of an adversarial system is to permit defendants to test the legal sufficiency of the prosecution's case. As with any other evidence, the defense had an opportunity to refute Dr. Hyma's opinion. Indeed, the defense challenged Dr. Hyma's causation opinion on cross-examination. The defense also could have brought in its own expert to refute Dr. Hyma's cause of death opinion, but it did not. Despite the trial court's express willingness to read a limiting instruction to the jury regarding Dr. Hyma's testimony, the defense did not propose an instruction. Neither of those tactical decisions render an otherwise admissible expert opinion inadmissible.

Moreover, Dr. Hyma's testimony did not invade the province of the jury as it did not provide a conclusion as to the ultimate issue to be decided by the jury. "Dr. [Hyma's] opinion, which was based on [his] training and experience, assisted the jury in understanding the evidence, and [he] did not testify to conclusions that the jury was qualified to make or to the ultimate question for the jury's determination—whether [Cardona] was guilty of the crimes for which [she] was charged." Williams, 209 So. 3d at 559. Dr. Hyma "did not implicate [Cardona] as being guilty of first-degree murder." Id.; see also Smith v. State, 28 So. 3d 838, 856 (Fla. 2009) (denying

the defendant's claim that the medical examiner's opinion invaded the province of the jury because it "assisted the jurors in deciding *what* happened, not *who* was responsible for the acts perpetrated against the victim").

The battered child syndrome evidence was relevant and admissible to prove both intent and lack of accident, which is precisely what the State used it for. It is irrelevant that Cardona chose a trial strategy other than accidental death. As in McGuire and other cases, because of the charges against Cardona, the State was "required to prove that [L.F.'s] death was caused by the defendant's **intentional act**." 502 U.S. at 69 (emphasis added). "Proof of [L.F.'s] battered child status helped to do just that; although not linked by any direct evidence to [Cardona], the evidence demonstrated that [L.F.'s] death was the result of an **intentional act** by *someone*, and not an accident." Id. at 69 (bold emphasis added).

The trial court performed the balancing test required by section 90.403, Florida Statutes, and determined the relevance was not substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury.[4]

[4] Although Cardona did not challenge Dr. Hyma's testimony under Williams, it is worth noting that the State properly provided notice of its intent to use Williams evidence under section 90.404, Florida Statutes. See Williams v. Florida, 110 So. 2d 654 (Fla. 1959). Thus, the testimony is not improper on that basis.

## CONCLUSION

Based on the record before us, we conclude the trial court did not act unreasonably or arbitrarily in admitting Dr. Hyma's expert testimony, which was relevant and highly probative evidence the State sought to introduce to meet its burden of proving the crimes charged to the exclusion of every reasonable doubt.

Affirmed.