

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :
Petitioner/ :
Cross-Respondent :

vs. : Case No. 67,282

W.S.L., A CHILD, :
Respondent/ :
Cross-Petitioner :

_____ :

REPLY BRIEF OF RESPONDENT/CROSS-PETITIONER

FILED
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Chief Deputy Clerk

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondent/Cross-Petitioner will rely on the Statement of the Case and Facts as contained in his answer brief.

SUMMARY OF ARGUMENT

W.S.L. recognizes this Court's recent ruling as the determining decision in the issue raised by Petitioner in Issue I.

W.S.L. argues that he is entitled to a competency hearing despite his status as a juvenile.

W.S.L. relies on his initial arguments for the remaining issues; however, he points out that contrary to the State's references this Court has jurisdiction to decide all issues.

ISSUE I

WHEN A DEFENDANT IS GUILTY OF
FELONY MURDER, CAN HE BE CON-
VICTED OF, ALTHOUGH NOT SENTENCED
FOR, THE UNDERLYING FELONY?

W.S.L. acknowledges the recent decision by this Court in State v. Enmund, Case No. 66,264 (Fla. August 29, 1985)[10 F.L.W. 441], as being controlling on this issue.

ISSUE II

DID THE SECOND DISTRICT COURT OF
APPEAL ERR IN HOLDING THAT A HEARING
COULD BE USED TO DETERMINE W.S.L.'s
COMPETENCY RETROACTIVELY?

The State's attempts to distinguish the recent Supreme Court decisions in Hill v. State, Case Nos. 65,223 and 62,227 (Fla. June 20, 1985)[10 F.L.W. 324], and Gibson v. State, Case No. 65,030 (Fla. August 22, 1985)[10 F.L.W. 409], are distinctions without a difference. Whether a defendant is a child or an adult, the rules provide for competency hearings in order to determine the present ability for standing trial. For juveniles the applicable rule is Fla.R.Juv.P. 8.170, which provides for a stay of proceedings and appointment of experts for purposes of determining if a child is incompetent to stand trial. The rule used to say "Procedure When Child Believed to be Insane," but this word "insane" was changed to "incompetent" in 1982. The Florida Bar, 418 So.2d 1004 (Fla. 1982). The test for

competency to stand trial is whether a person has sufficient present ability to consult with and aid his attorney in the preparation of a defense with a reasonable degree of understanding. Ferguson v. State, 417 So.2d 631 at 634 (Fla. 1982). Contrary to the Attorney General's opinion, W.S.L. is not putting forth his youth as a barrier to prosecution. W.S.L. is simply presenting reasonable grounds to question his capacity to stand trial. And once "reasonable grounds" are presented to a trial court that a defendant is not competent to stand trial, the court is obligated to grant a motion for determining competency; for a trial court cannot make a proper determination of a person's mental ability until after a hearing has been conducted. Boggs v. State, 375 So.2d 604 (Fla. 2d DCA 1979).

In this case more than just reasonable grounds were presented to show W.S.L.'s incompetency. As pointed out in W.S.L.'s initial brief, W.S.L. paid no attention to the proceedings, could not comprehend what his attorney and guardian had to say about the proceedings, and could not or would not discuss the incident with anyone - including his lawyer. One doctor's report noted that W.S.L. had no ability to assist his attorney in planning a defense (R22). During the middle of the proceedings, W.S.L.'s guardian ad litem testified that despite efforts by both himself and defense counsel, W.S.L. was unable to understand the nature of the proceedings and its consequences (R369,370). The guardian

then noted that throughout the entire proceeding, W.S.L. read a dozen comic books and drew sketches (R370). W.S.L. paid no attention to the witnesses - even his own mother - with the sole exception of listening a little to his brother (R370). There can be no doubt that had W.S.L. talked with his attorney about his (W.S.L.'s) intent in his actions with the baby, such information could have been invaluable to his defense - especially in the area of the specific intent charges. In addition, information as to how and when the baby suffered the fatal injuries could have done much to defend against the sex battery felony murder charge. Without assistance from his client, defense counsel could not adequately defend the case.

Although having an attorney and being proved guilty beyond a reasonable doubt is mandatory for juvenile proceedings, State v. D.H., 340 So.2d 1163 (Fla. 1963), these rights and protections are of no use to a child if he is not capable of taking advantage of them in defending himself. The proceedings against W.S.L. were merely a matter of form with defense counsel bound and gagged by an incompetent client. W.S.L.'s due process rights to fundamentally fair proceedings were denied when the trial court refused to conduct hearings in order to determine W.S.L.'s competency to stand trial. The Second District Court of Appeal properly ordered that a competency hearing be held, and this Court has determined that such a hearing cannot be held

retroactively. W.S.L. is entitled to a competency hearing and a new trial if determined to be competent.

W.S.L. relies on his initial brief for further argument on this issue.

ISSUE III

DID THE TRIAL COURT ERR IN DENYING W.S.L.'s MOTION FOR JUDGMENT OF ACQUITTAL AS TO THE CHARGE OF FIRST DEGREE FELONY MURDER WHEN THE STATE FAILED TO SHOW A CAUSAL CONNECTION BETWEEN THE UNDERLYING FELONY OF SEXUAL BATTERY AND THE RESULTING DEATH? IF ERROR WAS COMMITTED, CAN THE CHARGE BE REDUCED TO THIRD-DEGREE MURDER?

The State appears to question this Court's jurisdiction to review this issue because this issue was not certified as an important question. This court has previously ruled that once it takes jurisdiction over a case, all issues - not just those presented to obtain jurisdiction - may be decided.

Bankers Multiple Line Ins. Co. v. Farish, 464 So.2d 530 (Fla. 1985); and Bould v. Touchette, 349 So.2d 1181 (Fla. 1977). Thus, this issue may be considered and decided by this Court.

W.S.L. relies on his initial brief for further argument on this point.

ISSUE IV

DID THE TRIAL COURT ERR IN DENYING W.S.L.'s MOTION FOR JUDGMENT OF ACQUITTAL AS TO THE COUNT OF SEXUAL BATTERY DUE TO INSUFFICIENT EVIDENCE AND OF TWO ATTEMPTED SEXUAL BATTERY CHARGES WITH A PENCIL/HANGER IN THE VAGINA AND ANUS WHEN THE STATE FAILED TO SHOW EVIDENCE OF INTENT TO COMMIT THE BATTERIES FOR THE PURPOSE OF SEXUAL PLEASURE?

The State appears to question this Court's jurisdiction to review this issue because this issue was not certified as an important question. This court has previously ruled that once it takes jurisdiction over a case, all issues - not just those presented to obtain jurisdiction - may be decided. Farish, supra; and Bould, supra. Thus, this issue may be considered and decided by this court.

W.S.L. relies on his initial brief for further argument on this point.

ISSUE V

DID THE TRIAL COURT ERR IN NOT
GRANTING W.S.L.'s MOTION FOR
JUDGMENT OF ACQUITTAL AS TO THE
AGGRAVATED BATTERY CHARGE WHEN THE
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W.S.L. relies on his initial brief for further argument on this point.

CONCLUSION

In light of the foregoing reasons, arguments and authorities, this Honorable Court should reverse for a competency hearing and a new trial if it is determined W.S.L. is competent. The remaining issues raised by W.S.L. should also be determined in W.S.L.'s favor so as to determine the types of charges W.S.L. can be retried on.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to William I. Munsey, Jr., Assistant Attorney General, Park Trammell Bldg., 8th Floor, 1313 Tampa Street, Tampa, FL 33602, September 10th, 1985.

Respectfully submitted,


Deborah K. Brueckheimer
Assistant Public Defender