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IN THE SUPREME COURT
STATE OF FLORIDA

Case No.: SC17-506
DCA No.: 5D16-1348
Circuit Case No.: 10-1043CF

RODRICK D. WILLIAMS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

On Appeal from the Fifth District Court of Appeal,
and
Seventh Judicial Circuit,
in and for Saint Johns County, Florida

REPLY BRIEF

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ARGUMENT

I. Under the Sixth Amendment, the trial court reversibly erred by making a factual finding that Appellant actually killed or intended to kill the victim which increased the range of punishment from no mandatory minimum sentence to a mandatory minimum sentence of 40-years imprisonment.

In the *Answer Brief*, the State argues that: (A) the trial court properly made the finding of whether Appellant, RODRICK D. WILLIAMS, actually killed, intended to kill, or attempted to kill the victim; (B) the statute is not facially unconstitutional; and (C) any error was harmless under the circumstances.

A. Factual Finding

First, the State argues that the trial court properly made the factual finding pursuant to Section 775.082(1)(b)3, the directive of the Fifth District, and this Court's precedent in Falcon v. State, 162 So. 3d 854, 963 (Fla. 2015). See AB.13-17. Attempting to distinguish Alleyne v. United States, 133 S.Ct. 2151 (2013), from the case at hand, the State argues that a jury's guilty verdict on a charge of first-degree murder is sufficient to support a finding under Section 775.082(1)(b)3 because a jury must necessarily find premeditation: "It follows, then, that the jury has determined that the defendant actually killed, intended to kill, or attempted to kill the victim of the homicide." See AB.18. While the aforementioned logic may apply in situations where the juvenile acted alone in the homicide and/or where there is no separate felony charged in conjunction with the murder, such logic fails where

the State also pursues the felony murder theory of liability and does not provide a special option on the verdict form for Felony Murder, as was the case here.[1] See R.377; see also Fla. Std. Jury Instr. 7.3 (2010) ("In order to convict the defendant of First Degree Felony Murder, it is not necessary for the State to prove that the defendant had a premeditated design or intent to kill.") The State cannot now simply ignore that it argued two theories of liability to the jury: felony murder and premeditated murder.

As for Falcon, Appellant argued in the *Initial Brief* and reasserts here that neither party raised the issue of whether the trial court was permitted to make the factual finding under the Sixth Amendment. See IB.26. Again, the sole issue in Falcon was the retroactivity of Miller v. Alabama, 567 U.S. 460 (2012)—not the application of Alleyne. See 162 So. 3 at 963.

And to the extent that the State argues that the trial court properly relied on the statute and the opinion of the Fifth District, neither court was absolved from following the mandates of the United States Supreme Court. See Apprendi v. New Jersey, 530 U.S. 466, 494 (2000) (holding any fact that "expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an

[1] On the verdict form in this case, the State provided options under Second-Degree Murder for the jury to make special findings as to whether Appellant discharged a firearm and/or actually "inflicted death on the victim". See R.377. However, the State provided no such option under the First-Degree Murder section of the verdict form.

"element" that must be submitted to a jury); see also Alleyne, supra (applying Apprendi to mandatory minimum sentences); Hurst v. Florida, 136 S. Ct. 616 (2016) (applying Apprendi to capital punishment); Blakely v. Washington, 542 U.S. 296 (2004) (applying Apprendi to plea bargains); United States v. Booker, 543 U.S. 220 (2005) (applying Apprendi to sentencing guidelines); Southern Union Co. v. United States, 132 S.Ct. 2344 (2012) (applying Apprendi to criminal fines); Ring v. Arizona, 536 U.S. 584 (2002) (applying Apprendi to capital punishment).

B. Constitutionality of Section 782.082(1)(b)3

Next, the State argues that Section 782.082(1)(b)3 is not unconstitutional. See AB.17-23. However, Appellant never argued such as it is possible to construe Section 782.082(1)(b)3 constitutionally. See Harbour Condo. Ass'n v. Robbins, 914 So. 2d 925, 929 (Fla. 2005) ("[I]t is a fundamental rule of statutory construction, that, if at all possible, a statute should be construed as constitutional.") Nonetheless, Appellant will address the argument for the sake of clarity.

The plain language of the statute reads:

> 3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

See Fla. Stat. § 782.082(1)(b)3 (2017). Contrary to the State's argument, the statute does not require the trial judge to make a finding of whether the juvenile actually

killed, intended to kill, or attempted to kill the victim; rather, **the only finding that the statute requires the trial court to make is whether the juvenile is entitled to a review hearing after 25 years or 15 years**.[2] All that the Section 782.082(1)(b)3. requires is that this finding "be based upon" whether the juvenile actually killed, intended to kill, or attempted to kill the victim. The plain language of the statute is silent as to whether the trial court or jury must make the finding of whether the juvenile actually killed, intended to kill, or attempted to kill the victim. Thus, the plain language of the statute can be—and must be—construed in conformity with the Sixth Amendment's requirement that the jury make any finding of fact that "increases the prescribed range of penalties to which a criminal defendant is exposed" beyond a reasonable doubt. See U.S. Const. amend. VI; Apprendi, 530 U.S. at 484; Alleyne, 133 S. Ct. 2151.

C. Harmless Error

Finally, the State argues that any error in the trial court's factual finding that Appellant was harmless beyond a reasonable doubt because the facts support a finding that Appellant actually killed, intended to kill, or attempted to kill the victim and the trial court could impose the same sentence absent the same finding. See

[2] The trial court must also make this determination based on the juvenile's prior convictions as the statute prohibits review hearings for juveniles with prior convictions for various enumerated felonies. See Fla. Stat. § 921.1402(2)(a)1.-10. (2017).

AB.23-27.

Under the factual circumstances of the case, the error cannot be said to be harmless beyond a reasonable doubt because the State pursued theories of both premeditated murder and felony murder. See R.332-334; T.471, 484-488. It is to be noted that, during deliberations, the jury submitted the following question to the trial court:

> If Rodrick Williams is judged guilty of kidnapping as charged, does the law then make him a principle in the homicide by default?

See R.361. This question suggests that the jury at least considered the felony murder theory of liability, if not convicted him under such. Because the verdict form is silent on the issue, and because the jury's question suggests that it may have convicted Appellant under the felony murder theory (which requires no showing of intent), it cannot be said that the trial court's factual determination is harmless beyond a reasonable doubt.

The State also argues that the error is harmless because the trial court could impose the same sentence even if the jury found Appellant did not actually kill, intend to kill, or attempt the kill the victim; thus, only the timing of the review hearing is affected. First and foremost, Section 775.082(1)(b)1. does not give the trial court discretion to impose any sentence other than life imprisonment if the juvenile actually killed, intended to kill, or attempted to kill the victim: "A person who actually killed, intended to kill, or attempted to kill the victim…before the

person attained 18 years **shall be punished by a term of imprisonment for life**…"[3] See Fla. Stat. § 772.082(1)(b)1. (Emphasis added.) It is unclear from the record whether the trial court would have imposed the same sentence absent the factual finding. Thus, the Alleyne error cannot be deemed harmless beyond a reasonable doubt.

Additionally, the State argues that the finding of intended to kill, attempted to kill, or actually killed is inherent in the verdict. The State further argues that because the standard jury instructions included language that the defendant actually killed the victim, "Alleyne would be satisfied because the jury has either found the defendant guilty beyond a reasonable doubt of premeditated murder or felony murder as the actual killer." See AB.21. This argument renders the distinctions under Section 775.082(b) meaningless. The State ignore the facts that it charged a total of three co-defendants in this murder (a 31-year-old man, a 30-year-old woman, and 16-year-old Appellant) and that it argued to the jury both premeditated murder and felony murder as separate theories supporting the conviction without presenting a specialized verdict form.

But the importance of the review hearing also cannot be ignored given Mr. Williams' young age of 16 at the time of the offense. Mr. Williams will only be

[3] Compare Fla. Stat. § 775.082(1)(b)2. ("A person who did not actually kill, intend to kill, or attempt to kill the victim … **may** be punished by a term of imprisonment for life...")

afforded one review hearing during the entirety of his incarceration and thus one chance of release. See Fla. Stat. 921.1402. The difference between a review hearing after 15 years (when Mr. Williams is 31 years old) or after 25 years (when Mr. Williams is 41 years old) could very likely dictate whether he is capable of living a meaningful life in the outside world or whether he is institutionalized beyond return after spending 25 years surviving harsh prison conditions and abiding by "prison rules"—both official and unofficial. Accordingly, the Alleyne error in this case cannot be deemed harmless beyond a reasonable doubt.

CONCLUSION

In the absence of a jury's factual determination from the original trial, the trial court had two options under the Sixth Amendment: empanel a new jury to make the factual finding or apply the rule of lenity and sentence Appellant under Section 775.082(1)(b)(2). See generally Carawan v. State, 515 So. 2d 161, 165 (Fla. 1987). Because the trial court usurped the venerated role of the jury as the ultimate finder of fact, Appellant's sentence under Section 775.082(1)(b)(1) violates the Sixth Amendment and must be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following by electronic mail delivery on this 1st day of August 2017:

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CERTIFICATE OF TYPEFACE COMPLIANCE

I certify that the lettering in this brief is Times New Roman 14-point Font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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