

IN THE SUPREME COURT OF FLORIDA

SCOTT MANSFIELD,

Appellant,

v.

CASE NO. SC17-690
L.T. No. 1995-CF-2078
DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR OSCEOLA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellant, Scott Mansfield, was found guilty and sentenced to death for the brutal murder of Sara Robles in 1995. This Court affirmed Mansfield's conviction and sentence on direct appeal. See Mansfield v. State, 758 So. 2d 636 (Fla. 2000), cert. denied, 532 U.S. 998 (2001). This Court set forth the following factual summary of Mansfield's conviction and sentence:

On the morning of October 15, 1995, the body of Sara Robles was found lying in a grassy area next to a Winn-Dixie grocery store in Kissimmee, Florida. Robles was lying on her back with her legs and arms outstretched. Her shirt and skirt were pushed up partially revealing her breasts and pelvic area which were mutilated.

Examination revealed that Robles' nipples had been excised, as well as portions of her labia minor, majora and clitoris.

The police recovered from the scene a Winn-Dixie bag with a receipt inside, and another receipt reflecting the purchase of some groceries which were found scattered near Robles' body. [n1] Robles was found wearing a watch, apparently broken during the murder, which was cracked and stalled at 3 a.m. Additionally, among the items recovered strewn around her body were food stamps and a pager.

[n1] Juanita Roberson, a Winn-Dixie night-clerk working the early morning hours of October 15, testified that Robles, accompanied by Mansfield, made the purchases reflected in the receipts recovered by the police at the scene.

The ensuing investigation revealed that the receipts found near Robles' body reflected purchases made roughly at 2:35 and 2:36 a.m. [n2] The police then questioned Jesus Alfonso, a friend of Robles, who visited with Robles the previous evening. Alfonso told police that he and Robles went to Rosie's Pub, located in the same shopping plaza as the Winn-Dixie. Alfonso left the bar at 1:30 a.m., but Robles remained at the bar playing pool with a male whose description matched Mansfield's.

[n2] The receipts found at the crime scene indicated that the documented purchases were made at 1:35 and 1:36 a.m. However, when the police took the receipts to the Winn-Dixie and had the assistant manager run some receipts to check the accuracy of the time reflected therein it was discovered that the registers were approximately an hour behind.

Karen Hill, a bartender at Rosie's Pub, was then interviewed and indicated that Robles was at the bar the previous evening in the company of Mansfield. According to Hill, Mansfield, Robles, and a third individual by the name of William Finneran exited the bar together shortly after 2 a.m.

After speaking with other witnesses confirming that Robles was in the company of Mansfield and Finneran during the early morning hours of October 15, the police questioned Finneran who indicated that he had exited the bar with Mansfield and Robles shortly after 2 a.m. and that he last saw them around 3 a.m. at Winn-Dixie.

The police, after learning that the pager found at the murder scene was traced to Mansfield, focused their investigation on him. Additionally, the police interviewed Juanita Roberson, a Winn-Dixie night clerk, who indicated that Robles purchased the items reflected in the recovered receipts with a man whose description matched Mansfield's and that Robles was in the company of that same man outside the Winn-Dixie when Roberson took her break at approximately 3 a.m. the night of the murder. With this information in

hand, three detectives went to Mansfield's residence the night following the murder to question him. Mansfield agreed to be interviewed by the detectives at the police station.

Prior to being transported to the station, the detectives noticed that Mansfield had fresh scratches on his knees and hands. Once at the station, he avoided and inconsistently answered many of the questions posed to him during the roughly two-and-a-half hour videotaped session. Specifically, Mansfield admitted to being at Rosie's Pub with Robles, but initially insisted that he had gone directly home after leaving the bar. Following further questioning, he begrudgingly admitted going to Winn-Dixie after leaving Rosie's Pub.

Shortly before the interrogation ended, the police received further evidence placing Mansfield at the scene of the crime. Juanita Roberson, the Winn-Dixie night clerk, identified Mansfield in a photograph lineup at the police station as the man she saw with Robles outside the Winn-Dixie the previous evening at approximately 3 a.m. The detectives directed Mansfield to lift his shirt at which time they observed a bruise on his chest. The police then arrested Mansfield and took into evidence a ring he was wearing with a distinctive "grim reaper" design.

The following day, Mansfield's brother, Charles, called the police and asked them to come down to his apartment to gather some items found in Mansfield's room. Once there, the police recovered food stamps, a knife and sheath, clothing, and a towel. [n3]

[n3] During its case in chief, the State's senior crime lab analyst, David Baer, testified as to the results of DNA and blood testing done on the items recovered from Mansfield's room. His testimony established that some of the items had blood that was consistent with Mansfield's. The tests conducted on the items recovered from Mansfield's room, however, did not reveal the presence of Robles' blood.

While at the apartment the police also questioned Mansfield's 10-year-old niece, Melissa Mansfield, who told them that Mansfield arrived home on the morning of October 15 at about 4:30. Melissa told police that Mansfield came to the door soaking wet, wearing shorts but no shirt, and carrying his shoes. Melissa told police she gave Mansfield a towel at his request, and that she noticed what appeared to be a small blood stain on his shorts. [n4]

[n4] During Mansfield's interrogation with police the previous evening, Mansfield told police that he had taken a swim in the pool in the early morning hours of October 15 before entering the apartment and that his niece saw him enter the apartment afterwards.

The State introduced several other witnesses at trial who placed Mansfield with Robles at or near the crime scene at approximately the time the murder was presumed to have occurred. The State's medical examiner, Dr. Julie Martin, testified as to the existence of a pattern injury on the neck of Robles consistent with the pattern found on the "grim reaper" ring removed from Mansfield following his arrest.

Dr. Martin testified that Robles died of asphyxia due to airway compression as a result of blunt force trauma to the neck. Specifically, Dr. Martin opined that the murderer, while straddling Robles, strangled her with one hand, using the other hand or an object (the ring) to press down on her lower neck, causing her trachea to collapse. She further testified as to the existence of extensive bruising about Robles' eye, neck and collarbone. Dr. Martin concluded that Robles was conscious and struggling to breathe for "more than a few minutes" before becoming unconscious. According to Dr. Martin, Robles was alive but most likely unconscious when parts of her genitalia were excised by a sharp object consistent with the knife recovered from Mansfield's room.

The State also introduced the testimony of convicted felon Michael Derrick Johns who recounted a jailhouse conversation with Mansfield in which Mansfield confessed to Robles' murder. The defense did not present any evidence.

The jury, after being instructed on both first-degree premeditated murder and first-degree felony murder, found Mansfield guilty of first-degree murder. **The jury unanimously recommended the death penalty.** The trial court followed the recommendation and sentenced Mansfield to death.

In support of the death sentence, the trial judge found two aggravating circumstances: (1) the crime was especially heinous, atrocious, or cruel; and (2) the crime was committed during the commission of or an attempt to commit a sexual battery. The court found no statutory mitigation and five nonstatutory mitigators and found the following three mitigators were entitled to very little weight: (1) the defendant's good conduct during trial; (2) the defendant is an alcoholic; and (3) the defendant's mother was an alcoholic during his childhood. The court accorded the remaining two mitigators some weight: (1) the defendant had a poor upbringing and dysfunctional family; and (2) the defendant suffers from a brain injury due to head trauma and alcoholism.

Mansfield v. State, 758 So. 2d 636, 640-42 (Fla. 2000) (emphasis added).

Mansfield sought postconviction relief in state court, and the trial court granted Mansfield an evidentiary hearing on all of his postconviction claims involving factual disputes; including Claim VIII of his motion alleging that his judgment and sentence "were a nullity because the trial court lacked jurisdiction on felony murder because felony murder was not

charged in the indictment and Mr. Mansfield was not given notice of felony murder.” The case proceeded to an evidentiary hearing during the week of January 21, 2003. Subsequently, the trial court entered an order denying postconviction relief. With regard to Claim VIII of Mansfield’s motion, the court found that the claim was barred as it should have been raised on direct appeal, and further noted that caselaw allowed the State to proceed on felony murder even when the indictment charged only premeditation. Mansfield appealed the denial of postconviction relief to this Court, but did not challenge the court’s ruling with respect to Claim VIII. This Court affirmed the denial of postconviction relief on appeal. Mansfield v. State, 911 So. 2d 1160 (Fla. 2005).

Also of relevance to the instant case, Mansfield raised a claim in his state habeas petition alleging that appellate counsel was ineffective for failing to challenge the jury instructions that allowed the jury to find him guilty of first-degree murder if he was found guilty of either felony or premeditated murder. Id. at 1178-79. In rejecting this claim, this Court noted that both this Court and the United States Supreme Court have repeatedly rejected relief based on this issue. Id. (citing Schad v. Arizona, 501 U.S. 624, 645 (1991) (holding that the United States Constitution does not require

the jury to come to a unanimous decision on the theory of first-degree murder and that separate verdict forms for felony and premeditated murder are not required)). This Court further stated:

"It is well established that an indictment which charges premeditated murder permits the State to prosecute under both the premeditated and felony murder theories." Parker v. State, 904 So. 2d 370 (Fla. 2005). Furthermore "[b]ecause the State has no obligation to charge felony murder in the indictment, it similarly has no obligation to give notice of the underlying felonies that it will rely upon to prove felony murder." Kearse v. State, 662 So. 2d 677, 682 (Fla. 1995). Mansfield's appellate counsel was not ineffective for failing to raise a claim which we have repeatedly rejected. Floyd v. State, 808 So. 2d 175, 185 (Fla. 2002). To the extent that Mansfield raises a substantive claim on this issue, this claim is without merit under this prior case law.

Id.

Following his state postconviction proceedings, Mansfield sought relief in federal court by filing a petition for writ of habeas corpus. The federal district court erroneously granted Mansfield a new trial, Mansfield v. Secretary, Dep't of Corr., 601 F. Supp. 2d 1267 (M.D. Fla. 2009), but the Eleventh Circuit Court of Appeals reversed the court's order granting habeas relief and found that the admission of Mansfield's statement to law enforcement in violation of Miranda was indeed harmless error as correctly found by this Court on direct appeal.

Mansfield v. Secretary, Dep't of Corr., 679 F.3d 1301 (11th Cir. 2012), cert. denied, 568 U.S. 1098 (2013).

Mansfield filed his first successive motion for postconviction relief on September 10, 2014. The trial court conducted an evidentiary hearing on December 16, 2014, and ultimately denied relief. Mansfield appealed to this Court, and on August 25, 2016, this court affirmed the denial of relief. Mansfield v. State, 204 So. 3d 14 (Fla. 2016), cert. denied, 137 S. Ct. 1818 (2017).

On January 9, 2017, Mansfield filed a second successive postconviction motion pursuant to Florida Rule of Criminal Procedure 3.851 seeking relief based on Hurst v. Florida, 136 S. Ct. 616 (2016), and Hurst v. State, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). In addition to seeking Hurst relief, Mansfield included a claim seeking relief because his "conviction was unconstitutional because the indictment failed to charge felony murder in the indictment and Mr. Mansfield was denied a specific jury verdict on his conviction." The trial court summarily denied Mansfield's motion and he appealed to this Court.

This Court initially stayed the appeal pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla.), cert. denied, 138 S. Ct. 513 (2017), and following Hitchcock, this

Court issued an order requiring Mansfield to show cause why the trial court's order should not be affirmed in light of Hitchcock. After reviewing the parties' responses, this Court issued an order on January 25, 2018, directing the parties to further brief the non-Hurst related issue in Mansfield's case.

SUMMARY OF THE ARGUMENT

Mansfield argued in his successive postconviction motion that the State's failure to charge felony murder in the indictment and the lack of a specific jury verdict on the theory of murder required the court to vacate his conviction and remand for a new guilt phase. Mansfield's claim is untimely, procedurally barred and without merit.

ARGUMENT

MANSFIELD'S CLAIM ATTACKING HIS CONVICTION BASED ON THE STATE'S FAILURE TO ALLEGE FELONY MURDER IN THE INDICTMENT IS UNTIMELY, PROCEDURALLY BARRED AND WITHOUT MERIT.

Mansfield argued in claim 7 of his successive postconviction motion that his murder conviction was unconstitutional because the indictment failed to allege felony murder as a theory of prosecution and he was denied a specific jury verdict on his conviction. Mansfield's claim is untimely under Florida Rule of Criminal Procedure 3.851, procedurally barred and without merit. Under Rule 3.851(d)(2), a successive motion is subject to summary denial unless the defendant can establish one of two exceptions to filing successive motions - newly discovered evidence or a fundamental constitutional right that has been held to be retroactive. See Fla. R. Crim. P. 3.851(d)(2). Clearly, none of Mansfield's claims in his motion, including claim 7, met this standard.¹

¹ Mansfield argued that his motion was timely because it was based on Hurst v. Florida, 136 S. Ct. 616 (2016), but his conviction became final in 2001, and this Court has repeatedly held that Hurst is not retroactive to such cases. See Asay v. State, 210 So. 3d 1, 22 (Fla. 2016) (holding that Hurst does not apply retroactively to sentences of death that became final before the Supreme Court issued its 2002 decision in Ring v. Arizona, 536 U.S. 584 (2002)), cert. denied, 138 S. Ct. 41 (2017); Hitchcock v. State, 226 So. 3d 216, 217 (Fla.), cert. denied, 138 S. Ct. 513 (2017).

In addition to being untimely, Mansfield's claim is procedurally barred. Prior to trial, Mansfield filed a motion to preclude the State from proceeding with first-degree felony murder as a theory of prosecution which was denied by the trial court. Even though Mansfield could have clearly raised this issue on direct appeal, he did not do so. See Mansfield v. State, 758 So. 2d 636 (Fla. 2000). Accordingly, Mansfield is procedurally barred from raising this claim almost twenty years later. See Spencer v. State, 842 So. 2d 52, 60-61 (Fla. 2003) (noting that claims which appear on the trial record and which could have been raised on direct appeal are procedurally barred in postconviction motion); Smith v. State, 445 So. 2d 323, 325 (Fla. 1983) ("Issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack.").

In his original postconviction proceedings in 2002, Mansfield raised the identical claim and the postconviction court denied his claim as procedurally barred and without merit. Mansfield did not appeal the postconviction court's ruling on this issue to this Court and has thus waived it for further review. Mansfield, however, raised a related claim in his petition for writ of habeas corpus under the guise of ineffective assistance of appellate counsel. In addressing the

claim, this Court noted that it had repeatedly rejected relief on this specific claim; as had the United States Supreme Court. Mansfield v. State, 911 So. 2d 1160, 1178-79 (Fla. 2005) (citing Schad v. Arizona, 501 U.S. 624, 645 (1991) (holding that the United States Constitution does not require the jury to come to a unanimous decision on the theory of first-degree murder and that separate verdict forms for felony and premeditated murder are not required)). This Court further stated:

"It is well established that an indictment which charges premeditated murder permits the State to prosecute under both the premeditated and felony murder theories." Parker v. State, 904 So. 2d 370 (Fla. 2005). Furthermore "[b]ecause the State has no obligation to charge felony murder in the indictment, it similarly has no obligation to give notice of the underlying felonies that it will rely upon to prove felony murder." Kearse v. State, 662 So. 2d 677, 682 (Fla. 1995). Mansfield's appellate counsel was not ineffective for failing to raise a claim which we have repeatedly rejected. Floyd v. State, 808 So. 2d 175, 185 (Fla. 2002). To the extent that Mansfield raises a substantive claim on this issue, this claim is without merit under this prior case law.

Id. Thus, in addition to being untimely and procedurally barred, Mansfield is barred by the doctrine of collateral estoppel from relitigating this issue. See State v. McBride, 848 So. 2d 287, 290-91 (Fla. 2003). Even if this Court were to again address the merits of Mansfield's claim, the law is well established that the jury may find a defendant guilty of first-degree murder under the alternate theories of premeditation or during the

commission of a felony. Schad, 501 U.S. at 645; England v. State, 940 So. 2d 389, 398-99 (Fla. 2006); Walton v. State, 847 So. 2d 438, 443 n.4 (Fla. 2003); Knight v. State, 338 So. 2d 201, 204-05 (Fla. 1976).

To the extent Mansfield argues that the jury's unanimous death recommendation violates Caldwell v. Mississippi, 472 U.S. 320 (1985), such a claim is also untimely, procedurally barred and without merit. See Franklin v. State, ___ So. 3d ___, 2018 WL 897427 at *3 (Fla. Feb. 15, 2018) (rejecting Caldwell claim as procedurally barred and noting that Franklin, who had a post-Ring case, was still not entitled to Hurst relief given the jury's unanimous recommendation). Here, Mansfield's case was final before Ring and he is not entitled to the retroactive application of Hurst. Additionally, even if Hurst applied, any error would be harmless given the jury's unanimous recommendation of death in Mansfield's case. Id.; see also Davis v. State, 207 So. 3d 142, 174 (Fla. 2016). Because Mansfield's claims in his successive postconviction motion are untimely, procedurally barred and without merit, this Court should affirm the lower court's denial of relief.

CONCLUSION

In conclusion, Appellee respectfully requests that this Honorable Court affirm the postconviction court's order denying Mansfield relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 8th, 2018, I electronically filed the foregoing with the Clerk of the Florida Supreme Court by using the e-portal filing system which will send a notice of electronic filing to the following: James L. Driscoll, Jr., David Dixon Hendry and Gregory W. Brown, Assistants CCRC-M, Office of the Capital Collateral Regional Counsel, Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637-0907 (**driscoll@ccmr.state.fl.us**, **hendry@ccmr.state.fl.us**, **brown@ccmr.state.fl.us** and **support@ccmr.state.fl.us**).

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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