

Court of Criminal Appeals
April 30, 2014

Francis v. State

No. PD-0519-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

PRICE, J., delivered the opinion of the Court in which MEYERS, WOMACK, KEASLER, HERVEY, COCHRAN and ALCALA, JJ., joined. KELLER, P.J., and JOHNSON, J., concurred in the result.

Appellant was convicted of aggravated robbery and the jury assessed his punishment at seventy-five years of incarceration based on a felony enhancement. Prior to trial, the trial court signed a discovery order that required the prosecution to provide the defense with an opportunity to inspect all physical objects to be introduced at trial. At trial, the prosecution argued that Appellant robbed a woman he lived with after threatening her with a knife and a machete. Defense counsel objected that he had only been permitted to inspect the knife and did not know that a machete would be introduced at trial. The prosecutor claimed that she did not know that the defense was unaware of the machete because the machete was included in the previous prosecutor's notes. The trial court granted a motion for continuance to give the defense a chance to inspect the machete. After the defense inspected the machete, defense counsel moved to exclude the evidence based on the prosecutor's willful misconduct. The trial court made no express ruling on the willfulness of the prosecutor's conduct but declined to exclude the machete from evidence and allowed the victim to testify about it. The court of appeals affirmed the trial court's ruling.

Issue: Did the trial court err by failing to exclude the evidence and by finding that the prosecutor's conduct was not willful?

The trial court did not abuse its discretion. "Extreme negligence or even recklessness on the prosecutor's part in failing to comply with a discovery order will not, standing alone, justify the sanction of excluding relevant evidence." The trial court should only exclude evidence when the prosecutor willfully withheld it. While the trial court could have found that the prosecutor in this case willfully withheld evidence, it was not an abuse of discretion to find that she did not act willfully. The Court stated that it owes almost absolute deference to the trial court in this determination because it observed the prosecutor's responses during the inquiry. Furthermore, this case is distinguishable from *Oprean v. State*, 201 S.W.3d 724, 728 (Tex. Crim.App. 2006), which the defense asserts as applicable, because in *Oprean* the prosecutor specifically told the defense that she did not intend to use a videotape at trial that she subsequently used. In this case, the defense argued that the prosecutor had a pattern of willful noncompliance because she failed to timely disclose the existence of audio recordings of

telephone conversations of Appellant while in jail. However, the prosecutor only found out about the recordings the Friday before the trial began and informed defense counsel within twenty minutes of her discovering the recordings. Furthermore, the defense was granted a continuance to examine the machete and cannot establish how the defense was disadvantaged at trial. Thus, even if this Court adopted the due process approach that evidence should be excluded even absent willful misconduct when the evidence was not timely revealed, the defense in this case was given an opportunity to inspect the evidence and cannot establish how it was harmed by the late disclosure. Therefore, the Court affirmed.

Lewis v. State

Nolley v. State

NOS. PD-0833-13 and PD-0999-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Johnson, J., delivered the opinion of the Court in which Meyers, Price, Womack, Keasler, Hervey, Cochran, and Alcalá, JJ., joined. Keller, P.J., concurred.

At age sixteen, Appellant Lewis killed Jaime Lujan while committing or attempting to commit retaliation against Lujan's coworker, who provided the police with information that led to the arrest of Lewis's friend. Lewis was tried as an adult and convicted of capital murder and assessed a mandatory life sentence without the possibility of parole. He was not allowed to present mitigating evidence at a punishment hearing because life imprisonment without the possibility of parole was automatic under the statute at the time. The court of appeals affirmed his conviction but reformed his sentence to life imprisonment.

Appellant Nolley was sixteen when he killed Larry Ayala during a home invasion. He was also tried as an adult and convicted of capital murder. Nolly was not allowed to present mitigating evidence at a hearing and was sentenced to life imprisonment without the possibility of parole. The court of appeals affirmed but reformed his sentence to life imprisonment.

Both Appellants challenged the constitutionality of their mandatory sentences based on *Miller v. Alabama*, 132 S. Ct. 2455 (2012), which held that "the Eighth Amendment to the United States Constitution forbids sentencing schemes for juveniles in which life imprisonment without the possibility of parole is mandatory rather than based upon an individualized sentencing assessment." Appellants argue that their reformed sentences are unconstitutional because they were not afforded individualized sentencing.

Issue: Does *Miller v. Alabama* require individualized sentencing in juvenile capital cases?

No, the Court did not interpret *Miller* so broadly. The Texas Penal Code now requires a mandatory sentence of life imprisonment with the possibility of parole for defendants convicted of capital murder for crimes they committed as juveniles. *Miller* narrowly held that juveniles cannot receive mandatory sentences of life *without* the possibility of parole because juveniles are fundamentally different from adults. But *Miller* does not forbid mandatory sentencing schemes, only those that include life imprisonment without the possibility of parole, because those sentences remove any incentive for rehabilitation. *Miller*, therefore, does not require individualized sentencing and does not preclude mandatory sentencing for juveniles. The Court affirmed the judgment of the courts of appeals.

Colyer v. State

No. PD-0305-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Judge Cochran delivered the opinion of the unanimous Court.

Appellant was convicted of DWI after a jury trial. When the jury gave its verdict, defense counsel asked the trial judge to poll the jury based on the body language of the jury foreman when he told the judge that the verdict was unanimous. The foreman's initial statement when polled was, "It was a majority—It was—Yes, Your Honor." When the trial judge asked him to clarify, the foreman said that the jury voted unanimously. Appellant filed a motion for new trial based on juror misconduct. At the hearing on the motion for new trial, Appellant called the jury foreman as its only witness. The State repeatedly objected, arguing that Texas Rule of Evidence 606(b) precluded the hearing. The trial court allowed the hearing based on the two Rule 606(b) exceptions. The foreman testified that he only agreed to convict Appellant because he was concerned about how long the process was taking, the approaching inclement weather, and a phone call he received informing him that his daughter had tested positive for MRSA. The trial judge denied the motion for new trial. The court of appeals reversed, holding that the jury foreman's testimony established that outside influences caused him to change his vote.

Issue: Did the jury foreman's testimony establish outside influences for the purpose of Rule 606(b)?

No, the testimony did not constitute outside influence for the purposes of Rule 606(b). Rule 606(b) prohibits post-verdict juror testimony to impeach a verdict with two narrow exceptions. The outside influence exception allows testimony about external pressures that likely affected the verdict. "A rule 606(b) inquiry is limited to that which occurs both outside of the jury room and outside of the jurors' personal knowledge and experiences." Thus, a juror's personal pressures are irrelevant. Rule 606(b) is meant to address

issues such as outside research, bribery, or threats related to the trial. Appellant argued that the trial court was required to accept the foreman's testimony because the State did not contradict it. A trial court is not, however, required to accept testimony at face value simply because it is uncontradicted. Furthermore, the trial court was not permitted to grant a new trial based upon weather concerns, which are not outside influences. Jurors frequently face these types of normal pressures, as counsel can reasonably anticipate. Neither the weather nor the doctor's call was factual or legal issues relevant to the trial. Therefore, the Court reversed the court of appeals and affirmed the judgment of the trial court.

Bruton v. State

No. PD-1265-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Presiding Judge Keller delivered the opinion of the unanimous Court.

Appellant, Peter Bruton, was convicted of aggravated sexual assault of a child and indecency with a child by contact. At the punishment phase of the trial, the State introduced three exhibits that are now in question: (1) Exhibit 13 consists of a letter and three "certificates of conviction" from the Norwich Crown Court in the United Kingdom; (2) Exhibit 14 is an Interpol computer printout that has a fingerprint card and lists twelve convictions in the United Kingdom; and (3) Exhibit 15 consists of a letter to the Denton County District Attorney's Office from a Data Protection Disclosure Unit Officer of the Professional Standards Department in the United Kingdom and a computer printout stamped "professional standards." Each document identifies a "Peter Bruton" with a date of birth matching Appellant's. The letter in Exhibit 15 includes a case summary on Peter Bruton and explains that the Norfolk Constabulary does not have a certification stamp to send certified copies as requested, but that the documents had been stamped with "Professional Standards," the department they came from. The State used these documents to establish Appellant's history as a criminal in the United Kingdom.

The trial court held an admissibility hearing in which Appellant argued that the documents were not properly authenticated, were hearsay, and had not been sufficiently connected to him. The State argued that the documents were admissible under Texas Rules of Evidence 902(3) and 902(4), which govern foreign public documents and certified copies of public records. The trial court held that Exhibit 13 was certified because it contained cause numbers and a seal, Exhibit 14 should be treated like an NCIC or TCIC printout, and Exhibit 15 was arguably certified, but even if not, the letter gave good cause because the Norfolk Constabulary does not have a stamp and the documents were tied to Appellant by the name, date of birth, and address listed. Thus, the trial court admitted all three exhibits. The court of appeals

held that the exhibits were not properly authenticated and reversed and remanded.

Issue: “Whether the Court of Appeals erred by determining that the trial court abused its discretion in admitting official documents from the United Kingdom because the exhibits were not certified under Rule 902(4) and lacked a ‘final certification’ under evidence Rule 902(3) and the State did not establish good cause to dispense with the final certification under Rule 902(3).”

The Court held that the documents were not properly authenticated because they were not accompanied by a final certification by a diplomatic or consular official as required in Rule 902(3) and because the State lacked good cause for failing to obtain final certification. Only Exhibits 13 and 15 are at issue because the State conceded that it did not give the defense sufficient notice as to Exhibit 14. The Court began by looking to the Federal Rules of evidence and the Federal Advisory committee in interpreting rules 902(3) and (4), noting that 902(3) applies to original foreign public documents and 902(4) applies to certified copies of official records or reports.

Exhibit 13 is an official document falling under 902(3) and Exhibit 15 is a copy of records that falling under 902(4). 902(3) requires final certification, which “must directly or indirectly vouch for the genuineness of the signature and official position of the official who executes or attests to the foreign public document.” A U.S. diplomatic or consular official verifies the status of the official in the foreign country. “For an original foreign public document, this requirement must be satisfied with respect to the execution of the document or the attestation. For a certified copy, the requirement must be satisfied with respect to the certification of correctness.” None of the exhibits were accompanied by a certification by a diplomatic or consular official. 902(3) allows the final certification to be dispensed with for “good cause.” The State gave no reason for failing to obtain a final certification and the record indicates that the State failed to do so because it did not understand the certification requirement. Ignorance of the rule is not a legitimate excuse. Thus, the documents were not properly authenticated and the court of appeals was affirmed.