18

February '99 Volume 6.2

The Sentinel

THE OFFICIAL NEWSLETTER OF THE GREATER BIRMINGHAM CRIMINAL DEFENSE LAWYERS' ASSOCIATION

NEWS FROM THE COURTHOUSE

Rumor has it that the powers that be are seriously considering implementing a public defender system. Please send your responses to the Sentinel.

PRESIDENT'S COLUMN

Richard S. Jaffe, Esq.

930-9800

The Greater Birmingham Criminal Defense Lawyers Association is off to a great start in 1999. Our efforts in 1998 were well rewarded, as we pressed on, and realized such programs as deferred prosecution, participation at judges' meetings, the shaping of the Rocket Docket and input to virtually all phases of the Criminal Justice System. The seminar that we put on was the best ever and the best attended. Our membership is increasing handsomely, and our members continue to win some spectacular victories. Through individual efforts and skills, our members have prompted significant appellate court reversals and, in some cases, some courageously written opinions by State and Federal judges, some of which have highlighted the prosecutions' failure to disclose exculpatory and impeachment evidence.

Recently, these kinds of tactics are coming under public scrutiny. As discussed in an article herein, the Pittsburgh Post-Gazette recently released a 10-part series on prosecutorial misconduct . Fortunately, many in this organization have been willing to fight for such material and some have even had cases dismissed because of prosecutorial misconduct. In the recent past, for example, the unrelenting and heroic efforts of Mark White and his co-counsel, resulted in the dismissal of all charges against all Co-Defendants in the "TIECO, Inc." It was the efforts of Mark that created the basis of Judge Garrett's scathing opinion citing numerous instances of prosecutorial misconduct in those cases. In that case, Judge Garrett found that "the prosecutorial misconduct [in this case] is so pronounced and persistent that it permeates the entire atmosphere of this prosecution and warrants a dismissal of these cases."

Similarly, in the Federal arena, in separate cases, Mark White's pressing efforts to insist upon discovery compliance resulted in the dismissal of the charges in U.S. v. Dollar before Judge Clemon in October of 1998. Furthermore, the persistent skills and undaunting efforts of John Lentine resulted in an opinion written by Magistrate Judge Putnam in a 1996 robbery case in which the Judge correctly found that the Federal agents who testified in the case had lied to the court.

There is no way to mention the numerous victories at both the trial and the appellate levels resulting from the efforts of our members. For example, Joe Morgan and his firm continue to obtain death penalty reversals We have individually and as a group, made a significant difference in creating a

constitutionally mandated balance in the criminal justice system.

I will take a moment here to again commend our members who ran for judgeship - several of which were successful. Special recognition should again go to the efforts of both Virginia Vinson and Tommy Nail who ran a first-class campaign in a race where our organization and the citizens of Alabama would be the winner no matter what the result. Also, Ed May ran a fine race against newly elected Judge Gloria Bahakel.

Speaking of discovery, mention has already been made about the efforts of former member Doug Jones, the United States Attorney for the Northern District, who implemented a system where much discovery is to be turned over to the defense by the time of arraignment. However, we are still having much trouble in the State Courts. The form CYA letter written to defense lawyers after they file a Discovery Motion is simply unacceptable. When we try to make appointments with some prosecutors, they are either in court or otherwise unavailable. Every member should write a letter to Roger Brown and David Barber, and copy the appropriate judge, whenever efforts to obtain discovery are thwarted, delayed, or frustrated. I intend to personally press my efforts so that the discovery that we are entitled to is turned over to us rather than receiving some meaningless form letter that creates a burden on us without any return, and subverts the meaning and the spirit of Rule 16.

Members Scott Boudreaux and Murray Stovall made an inquiry to the Sentinel regarding a policy implemented by the City Court in which lawyers and prosecutors were denied the ability to review a court file until the day of trial. We launched into immediate action. Board members were consulted and I wrote a letter and called both Assistant District Attorney Charles Wyatt and City Attorney Demetrius Newton. A copy of this letter appears on the opposite page of this newsletter. As a result of our efforts, this policy was rescinded within days.

As I stated from the beginning, we are off to a great start in 1999. This article only highlights our work and our energies We have done much more than the space allowed for me to mention, and we have so much more to do.

We will continue to build in strength, numbers and fortitude, and we will continue to make a difference.

CONGRATULATIONS

John Lentine has been appointed federal CJA Panel representative for the Northern District of Alabama by Judge Pointer

---

GBCDLA'S IMMEDIATE RESPONSE TO CITY COURT FILE CLOSING

January 29, 1999
FACSIMILE AND MAIL
254-2502

Demetrius Newton, City Attorney
Birmingham Legal Department
Birmingham City Hall
710 20th Street North
Birmingham, AL 35203

Dear Demetrius:

Thank you for returning my recent phone call, and I am sorry that we have more or less been playing phone tag.

The reason that I called, and now write, is because, as President of the Greater Birmingham Criminal Defense Lawyers Association, various members have contacted me with great concern over an apparent policy implemented in the City Court.

These lawyers assert that they no longer have access to the court file of a citizen accused of wrongdoing in the City Court of Birmingham, unless and until they arrive in court. I have also confirmed this situation with Assistant Attorney Charles Wyatt who also has expressed to me frustration over his inability to access these files as well.

Not only are these files a matter of public record - as is any document in the City Court Clerk's Office not under seal - but by denying access to the accused

through his attorney, violates the Sixth Amendment of the United States Constitution and Article I, Section 6 of the Alabama Constitution. It denies the effective assistance of counsel by denying the accused essential information for trial preparation including, but not limited to, warrant information, notice of the charge, addresses of witnesses, and other such data.

The practical effect of this unfortunate situation will be to backup irreparably the court system, impede settlement negotiations, create trials on cases that could have been settled, and increase the appeal load, which is already out of control in the Circuit Court of Jefferson County.

I would appreciate your assistance in reversing this unconstitutional measure and to prevent what will surely erupt into wasteful litigation.

Please let me know at your very earliest convenience your position and what, if any, efforts you can make to help.

With kindest personal regards, I am,

Very truly yours,

Richard S. Jaffe
President

RSJ/mg

cc: John Robbins, Esq.
Richard Izzi, Esq.
Virginia Meigs, Esq.
Barry Alvis, Esq.
Ken Gomany, Esq.
Emory Anthony, Esq.
Tommy Spina, Esq.
John Lentine, Esq.
Scott Boudreaux, Esq.
Linda Flippo, Esq.

OUT WITH MIRANDA, IN WITH § 3501

W. Casey Duncan, Esq.

Did you know you could lose an appeal on an issue when the government actually agrees with you? Sound ridiculous? Think again.

A Defendant's voluntary statement is admissible in federal court, even if the confession was obtained in violation of the principles of Miranda, the 4th Circuit Court of Appeals ruled last week. A three judge panel of the Richmond, VA-based appellate court said that Miranda is out, and a "voluntariness" standard, from a 31-year-old statute, is in when it comes to statements admitted in federal prosecutions. The case is U.S. v. Dickerson, --- F.3d ---, 1999 WL 61200 (4th Cir. (Va.) Feb. 08, 1999). The statute, 18 U.S.C. § 3501, passed in 1968, purported to legislatively overrule Miranda and restore voluntariness as the standard for admission of confessions. Under the voluntariness standard, federal courts would decide on a case-by-case basis whether a confession was admissible. Previously, that standard has been a separate, but not the sole, question in determining admissibility. Now, section 3501, "rather than *Miranda*, governs the admissibility of confessions in federal court," the court said.

The decision has already drawn attention, not just for its result, but for the way in which the court reached its decision. Since § 3501's passage over 30 years ago, the Justice Department has chosen not to use the statute to try to admit confessions that were obtained in violation of Miranda. Through all of the different presidential administrations, the word from DoJ was that the statute was unconstitutional. The panel, however, looked past the government's refusal to advocate the statute, seizing upon arguments of amicus briefs filed by both the Washington Legal Foundation and the Safe Streets Coalition. The panel, stating that it was a "court of law and not politics," also said that DoJ could not prevent it from deciding the case under what it considered to be the applicable law. In fact, the court called the government's refusal to defend the statute an "extraordinary event" that, in the court's opinion, justified the decision to allow the amici curiae to not only raise the issue, but also participate in oral argument. The court also noted that notwithstanding the government's decision not to raise the § 3501 issue, that issue had been "squarely presented" by

the fact that the confession could not come in absent application of the statute, and the defendant probably would otherwise be acquitted. What a refreshingly honest admission of result-oriented decision making!

There was a dissent in the case. In concurring in part and dissenting in part, Circuit Judge Michael did say that, "[i]n pressing § 3501 into the prosecution of a case against the express wishes of the Department of Justice, the majority takes on more than any court should." In Judge Michael's opinion, "the situation calls for the exercise of judicial restraint." When the case comes back for rehearing, let's hope a majority of the full panel agrees.

Federal Prosecutors Out of Control?

Derek Drennan, Esq.

Recently the Pittsburgh Post Gazette released a ten-part series on prosecutorial misconduct and abuses after a two-year investigation. The series focuses on the Government's use of paid, with money or leniency, Government informants to secure indictments and convictions, the Government's routine refusal to turn over exculpatory evidence, and a willingness of incarcerated individuals to make deals with the Government to testify about crimes "that might have been committed while they were in prison, by people they have never met, and places they have never been." The Post Gazette found "hundreds of cases where prosecutors intentionally withheld discoverable material." The investigation also uncovered a situation where an informant was being paid $2,000 per month to feed agents information. When the informant had no information but wanted the money to keep coming, the informant just made up information. On one occasion the informant told Federal agents that there would be drugs at a certain residence. When agents raided the home, they found no drugs and ended up shooting the occupant three times - twice in the back. In addition, at the time the Government relied on the informant's statement, they knew that the informant had been untrustworthy in the past. All of our members should access this series from the Internet. The newspaper's Internet address is www.postgazette.com. This ten-part series covers the breadth and scope of the prosecutorial abuses which are currently occurring in all the Federal circuits and is a must read for the criminal defense practitioner.

LEGISLATIVE ACTION ALERT -- ACT NOW TO SAVE ETHICAL STANDARDS FOR GOVERNMENT LAWYERS STATUTE!

Leslie Hagin, NACDL

THE JUSTICE DEPARTMENT AND SENATE JUDICIARY COMMITTEE CHAIRMAN ORRIN HATCH (R-UT) ATTACKING NEW STATUTE CONFIRMING THAT FEDERAL PROSECUTORS ARE SUBJECT TO STATE SUPREME COURT AND LOCAL FEDERAL COURT RULES OF ATTORNEY ETHICS

Your help is urgently needed to ensure that Department of Justice attorneys are not exempted from state supreme court and local federal court ethics rules that have historically governed all attorneys. A statute clarifying that federal government lawyers are not "above the law" of ethical conduct passed last October, to become effective April 19, 1999. BUT NOW DOJ IS BUSY TRYING TO GUT THAT MEASURE, AIDED BY SENATE JUDICIARY COMMITTEE CHAIRMAN ORRIN HATCH (R-UT), WHO HAS JUST INTRODUCED SENATE BILL S. 250, TO GUT THE ETHICAL STANDARDS STATUTE, AND GRANT DOJ AN EXEMPTION FROM THE RULES WHENEVER DOJ DECIDES THAT A RULE OF ETHICAL ATTORNEY CONDUCT CONFLICTS WITH ITS "POLICIES" (e.g., THE THORNBURGH MEMO/RENO REGULATION).

For the first time, S. 250 would put a congressional imprimatur on the Department's roundly condemned self-authorizing regulations purporting to allow it to self-exempt its own attorneys and agents from the fundamental State Supreme Court rules of ethics.

In recent years, the Department of Justice has claimed that it is exempt from certain ethics rules. In 1994, DOJ issued regulations purporting to exempt its attorneys from attorney ethics rules prohibiting unauthorized contact with represented persons. Before adjourning, the 105th Congress passed, and the President signed into law, legislation rejecting this position.

The new law explicitly clarifies that federal prosecutors are subject to state laws and ethics rules governing attorneys' conduct. This provision, named after its chief sponsor, Rep. Joseph McDade (R-PA), was included in the omnibus spending bill, P.L. 105-277, at Sec. 801. The McDade provision negates the 1994 Justice Department regulations that claimed to exempt the Department's lawyers from Rule 4.2. It passed the House of Representatives by the whopping margin of 345-82, with strong support from both parties, including Speaker Dennis Hastert (R-IL), Majority Whip Tom DeLay (R-TX), Chris Cox (R-CA), House Judiciary Committee Chairman Henry Hyde (R-IL), Minority Leader Richard Gephardt (D-MO), Minority Whip David Bonior (D-MI), and original co-sponsor John Murtha (D-PA).

The statute's effective date was delayed for six months (until April 19, 1999) -- to allow the Department to amend its rules to comply with the new law. High-level Department of Justice representatives (notably, Deputy A.G. Eric Holder, Jr. and legislative affairs spokespersons) immediately began vowing to abuse this delay, to lobby to thwart the new law. They are busy urging members of the new, 106th Congress -- especially Senators on the Judiciary Committee -- to repeal the new law. Now, Senators Orrin Hatch (R-UT), Mike Dewine (R-OH), and Don Nickles (R-OK) have taken up the Department's untenable case, with introduction of their bill to repeal the important ethical standards statute. S. 250 MUST BE STOPPED AND THE ETHICAL STANDARDS STATUTE MUST BE ALLOWED TO TAKE EFFECT AS WRITTEN AND SIGNED INTO LAW JUST LAST OCTOBER.

YOUR ACTION NEEDED!

Below is a Fact Sheet and the text of the new ethics law that should be retained. Please use these materials to contact your two Senators and one Representative right away, and urge them to reject any other efforts to repeal or weaken this important government attorney ethics law, or to otherwise allow the Department of Justice to exempt itself from the state supreme court and local federal courts' independent and effective supervision of attorneys. Contact them at both their Washington, DC office and their local district offices.

If your Representative is one of those key members of the House cited above as a supporter of the statute, we especially need you to urge them to lead the resistance to DOJ efforts to repeal or weaken the new law. The members of the Senate Judiciary Committee are most in need of hearing from constituents about the need to retain the new law and reject S. 250. The current members of the Senate Judiciary Committee are as follows:

Chairman Orrin Hatch (R-UT); Strom Thurmond (R-SC); Charles Grassley (R-IA); Arlen Specter (R-PA); Jon Kyl (R-AZ); Mike DeWine (R-OH); John Ashcroft (R-MO); Spencer Abraham (R-MI); Jeff Sessions (R-AL); and Robert Smith (R-NH).

Ranking Minority Member Patrick Leahy (D-VT); Edward Kennedy (D-MA); Joseph Biden (D-DE); Herbert Kohl (D-WI); Dianne Feinstein (D-CA); Russ Feingold (D-WI); Robert Torricelli (D-NJ); and Charles Schumer (D-NY).

All SENATORS can be reached at their Washington offices through the Senate Switchboard Operator (202) 224-3121; and by addressing correspondence to The Honorable (full name); United States Senate; Washington, DC 20510. All REPRESENTATIVES can be reached through the House Switchboard Operator (202) 225-3121; and by addressing correspondence to The Honorable (full name); United States House of Representatives; Washington, DC 20515.

Contact me if you have any questions or need further information.

* * * * * * * * * * * * * * * * * *

FACT SHEET

New Law Clarifies Federal Prosecutors are Subject to State Supreme Court and Federal Court Rules of Attorney Ethics

The Omnibus Consolidated and Emergency Supplemental Appropriations bill, P.L. 105-277 (H.R. 4328), contains a provision, authored by Rep. Joseph McDade (R-PA) and supported by NACDL, which explicitly clarifies that federal prosecutors and

regulatory lawyers are indeed subject to the same state supreme court and federal court rules as govern the conduct of all other attorneys.

Background:

This statute is intended to invalidate a controversial Department of Justice (DOJ) regulation designed to exempt federal prosecutors from certain state ethics rules.

In June 1989, U.S. Attorney General Richard Thornburgh, in an internal memo. to DOJ attorneys, said that federal prosecutors, and others working at their direction, are authorized to question a suspect who is represented by counsel without informing that counsel. He argued that any disciplinary rule for the profession which placed a burden on Department of Justice attorneys was invalid under the Supremacy Clause of the Constitution, and that the state rules against contacts with represented parties (modeled upon ABA Model Rule of Professional Conduct 4.2 and its predecessor) were unenforceable against federal prosecutors.

On August 4, 1994, the Department of Justice issued a final regulation outlining the circumstances under which Department attorneys are permitted to so interrogate persons represented by counsel. NACDL and many others opposed the regulation as an impermissible infringement on the right to counsel. The regulation substituted the Attorney General's self-interested supervision of her own employees for the control and supervision that have historically been the province of the neutral state and federal judiciary.

Congress has now recognized these principles by passing the ethical standards statute on October 21, 1998. This law is also supported by the ABA, the Conference of (State Supreme Court) Chief Justices and the American Corporate Counsel Association, among others.

Legislative Status:

The new statute is to take effect 180 days after enactment, or on April 19, 1999. Representatives of the Department have used this delay to seek to repeal or weaken the statute, urging Congress to replace it with a provision authorizing the Attorney General to promulgate a complete "DOJ code of ethics" that would preempt all state and federal court regulation of federal prosecutors. This was in fact a proposal by Senate Judiciary Committee Chairman Orrin Hatch (R-UT) and then-Majority Leader Bob Dole (R-KS), in 1995-1996 (104th Congress). And this is the proposal in the "new" Hatch bill, S. 250. See S. 250 Sec. 2(b).

Specific Concerns:

-- Congress should reject S. 250 or any other attempt to repeal the new ethics law and replace it with a Justice Department self-regulation scheme. Federal prosecutors, like all other lawyers, historically have been subject to investigation and discipline by the ethics authorities of the state supreme court by which in which they are admitted to practice.

-- No internal Justice Department ethics system can guarantee the objectivity that the current, independent system delivers. Currently, misconduct allegations against federal prosecutors are subject generally to two levels of outside review: state lawyer disciplinary agencies investigate complaints and recommend sanctions if appropriate; state supreme courts then rule upon those recommendations.

-- Nor do state ethics rules form a hodgepodge of inconsistent standards. Since 1908, standards of professional conduct recommended by ABA have become the national professional model, adopted by states almost universally. In 1983, the ABA adopted a third revised standard of its statement of professional standards, the ABA Model Rules of Professional Conduct, which nearly all states have followed. Indeed, all law students must pass a course on these rules before graduating from law school, and all law school graduates must pass a special exam on these rules before being licensed to practice law anywhere, by any state supreme court licensing authority.

-- Department of Justice self-regulation would be of questionable constitutionality under the separation of powers doctrine. The power to regulate the conduct of federal prosecutors in the federal courts is inherently that of the federal judiciary, not the Attorney General or the executive branch.

-- Any attempt to end the longstanding practice of having state and federal judicial authorities exercise independent supervisory authority over Justice Department prosecutors would also upset the traditional balance of responsibilities in the court system. Prosecutors must be held to the highest standard of conduct because of their extraordinary

powers and unique role in our justice system. Permitting the Justice Department to write special ethics rules for its prosecutors creates a double standard and sends precisely the wrong message to the profession and the public.

* *

ETHICAL STANDARDS STATUTE SHOULD BE RETAINED

The provision is Section 801 of H.R. 4328, The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, signed into law October 21, 1998, P.L. 105-277:

SEC. 801. ETHICAL STANDARDS FOR FEDERAL PROSECUTORS. (a) In General.-- Chapter 31 of title 28, United States Code, is amended by adding at the end the following: "Sec. 530B. Ethical standards for attorneys for the Government. "(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

"(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

"(c) As used in this section, the term `attorney for the Government' includes any attorney described in section 77.2 of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.".

(b) Clerical Amendment.-- The table of sections at the beginning of chapter 31 of title 28, United States Code, is amended by adding at the end the following new item:

"530B. Ethical standards for attorneys for the Government.".

(c) Effective Date.-- The amendments made by this section shall take effect 180 days after the date of the enactment of this Act and shall apply during that portion of fiscal year 1999 that follows that taking effect, and in each succeeding fiscal year.

GBCDLA MEMBERSHIP DUES FOR 1998-1999 ARE DUE. PLEASE FORWARD DUES TO GBCDLA, P.O. BOX 370282, BIRMINGHAM, AL 35203.

DUES:

$25.00

The following members have paid their dues for 1998-1999:

James Sturdivant
Emory Anthony
Joe Morgan, Jr.
Joe Morgan, III
Martain Uptain
Robert Owin, Jr.
Charles Scott Linton
Henry Penick
Alison Burns Wallace
Matthew S. Ellenberger
Chuck Hunter
Andrew Coleman
Scott Hughes
Katheree Hughes
Jan Loomis
Virginia Vinson
Jeffrey Braxner
Julien Relfe-Massey (Paid Twice)
Lucien Blankenship
Wilson Myers
Larry Johnson
Victor Spencer
*Ken Gomany
*Tommy Nail
*John Lentine
Virginia Meigs
Rebecca G. Thomason
Charles Salvagio
Charles Thompson Amos
Michael Shores
Murray Stovall
Lisa J. Hill
Squire Gwin
Jim Wooley
Davis Lawley
David Simpson
*Tommy Spina
Gordon Warren
Richard Izzi
*Richard Jaffe
Derek Drennan
Cecilee Beasley

John Morrison
*Barry Alvis
John Burnson
Kay Laumer
Don Colee
Marcus Jones
Richard Storm
Ron Thrasher
Tom Head
*John Robbins
Richard London
David C. Johnson
James McInturff
Ronald Leaf
Bob Sanford
Sandra McDaniel
Michael Blalock
Harlan Mitchell
Bill Grower
Richard Rice
Elizabeth Roland
Wendy Williams
Casey Duncan
Tosca Hieftje
Greg Case
David Hampe
Frank Russo
Cheryl Chapman
David Gespass
Bill Godwyn
Marshall Jackson
*Mark Polson
George Miller
Lynneice Powell
Bill Newmann, III
Brett Bloomston
Lee Lesley
Jeffrey Dial
Nancy Lonnergan
Roy Brown
Belinda Weldon
Alan Flowers

RECENT DECISIONS

ALABAMA COURT OF CRIMINAL APPEALS

February 12, 1999

No opinions released.

February 5, 1999

List of Cases and Attorneys

Woodall v. State

Bradford v. State

Opinion of the Court delivered by Patterson, retired Appellate Judge. The Defendant, Jay Bradford, was convicted of attempted murder and was sentenced to 50 years imprisonment and ordered to pay a $5,000 fine. The evidence introduced at trial tended to show that the appellant and four companions were stopped by police for speeding after leaving an Alexander City nightclub. Two of the occupants in the vehicle ran after the car was stopped. Two of the occupants remained in the car and the appellant got out of the car with an SKS rifle and fired three shots at Officer Mike Smith, hitting the officer all three times. The Court found that there was sufficient evidence to convict Mr. Bradford of attempted murder and also found that the Defendant's alleged assertions of error were without merit. Specifically, the Court found that the appellant was not entitled to the discovery of the statements of three of the uncharged occupants of the vehicle. The Court held that because the statements in questions were not statements of accomplices or Co-Defendants and because the statements did not include any exculpatory material, they were not discoverable pursuant to Rule 16.

February 1, 1999

Lindley v. State

Sparks v. City of Weaver

Smith v. State

The Appellant, Erin Smith, was convicted of receiving stolen property in the second degree in violation of §13A-8-18, Ala. Code 1975, and was sentenced to twenty years imprisonment pursuant to the Habitual Felony Offender Act. Evidence introduced at trial suggested that the Defendant stole a leaf blower in Columbus, Georgia, transferred it to Alabama, and subsequently sold it to a pawn shop in Phenix City, Alabama. The Defendant was convicted in Georgia of theft of the leaf blower. The Defendant alleges that he cannot be convicted of receiving stolen property because he is the one who stole the property. The Court points out that Alabama case law has unequivocally held that a person cannot be convicted over receiving or obtaining property where the undisputed evidence is that the Defendant had stolen the property. However, the State argues that the disposing of the property by selling it at the pawn shop in Alabama is a separate and distinct offense and is a separate action from the theft. State cited to a New Mexico Court of Appeals case which held that a person who steals property cannot be convicted of receiving stolen property or retaining the property. However, they could be convicted receiving stolen property if the Defendant disposed of the property. The Court of Criminal Appeals held that a person who steals property may be convicted of receiving that same property if the evidence shows that he disposed of the property.

Stinson v. State

Opinion of the Court delivered by Judge Long. Defendant John Bruce Stinson appealed from his conviction in Mobile County District Court for driving under the influence of alcohol directly to the Court of Criminal Appeals. Rule 30.2, Alabama Rules of Criminal Procedure, provides that an appeal may be taken directly from a District or Municipal Court to an Appellate Court if an adequate record or stipulation of fact is available and the right to a jury trial is waived by all parties entitled to trial by jury. While the Defendant presented an adequate record to the Court of Criminal Appeals, nothing in the record reviewed indicated that the Defendant had waived his right to a jury trial. Therefore, the Court determined that it did not have jurisdiction to hear the appeal and dismissed the appeal.

January 29, 1999

No opinions released.

January 22, 1999

No opinions released.

January 15, 1999

List of Cases and Attorneys

Frazier v. State

Opinion of the Court delivered by Judge Brown. The Defendant, Demetrius Terrence Frazier, was convicted of capital murder during the course of a robbery and was sentenced to death. The Defendant was charged with a three-count indictment for murder made capital because it occurred during a robbery (Count 1), murder made capital because it occurred during a burglary (Count 2), and murder made capital because it occurred during a rape (Count 3). All three of the courts alleged in the indictment stemmed from the same transaction and all involved the same victim. The jury found the Defendant guilty of Count 1 and guilty of the lesser included offense of intentional murder as to Count 3. The jury deadlocked on Count 2 and the Court declared a mistrial. The jury recommended the imposition of the death penalty by a 10-2 vote The Court followed the jury's recommendation for the death penalty and also sentenced the Defendant to life in the penitentiary on the murder conviction. The Defendant cites many assertions of error, none of which the Court found had merit. The Court did, however, sua sponte remand the case to the Trial Court and directed that the conviction and sentence for intentional murder be vacated as violative of the principles of double jeopardy.

Scroggins v. State

Pressley v. State

Opinion of Court delivered by Judge Cobb, the Defendant Marcus Pressley was convicted of capital murder and sentenced to death. The evidence introduced at trial indicated that Mr. Pressley, in conjunction with two Co-Defendants, robbed John's 280 Pawn Shop in Shelby County and then Mr. Pressley shot and killed the owner of the store and a

store clerk. The entire robbery and murder were caught on video tape. Several items taken from the store were found at the homes of the Co-Defendants. Defendant cites to numerous alleged errors occurring during the course of the trial, only one of which the Court found had merit. The Defendant objected to the State suggesting to a juror during individual sequestered voir dire that the Legislature could change the law regarding life without parole, and thereby a person convicted of capital murder could be paroled. The Court agreed with the Defendant's objection to that suggestion but found that because the juror was struck through use of the Defendant's preemptory strikes and because there was no evidence that the juror communicated that information to other jurors and was not part of the deliberations, that the error was harmless.

Knight v. State

Appeal from summary dismissal of Rule 32 petition(s) (CC-91-2270.61 and -2274.61). Opinion by Judge Long (CR-97-0405). Knight asks for a new trial, based on newly discovered evidence that his trial counsel had a conflict of interest in that he (counsel) was at the time representing the trial judge in a civil case. The record, however, is/was devoid of any evidence substantiating Knight's claim(s). Therefore, he failed to meet his burden of proof. AFFIRMED.

Miller v. State

Appeal from Jefferson Circuit Court (CC-97-4506). Opinion by Judge Brown (CR-97-1609). Miller, after being struck in the head during a fight with the victim, hit the victim with his pickup truck. The victim's injuries proved fatal, and Miller was charged, tried & convicted of murder. However, the trial court erred when it refused to instruct the jury on "heat-of-passion" manslaughter. REVERSED AND REMANDED for new trial.

Morgan v. State

Appeal from Baldwin Circuit Court (CC-98-65). Opinion by Judge McMillan (CR-97-1773). An investigating officer's comment that Morgan was a "violent" person found not to warrant reversal. Also, Hurth v. State, 688 So. 2d 275 (Ala.Cr.App. 1995) is hereby overruled to the extent that it required prosecutors, in order to invoke the provisions of the HFOA, to have admitted at trial some documentation of the defendant's prior convictions being based upon an adjudication of guilt. Interestingly enough, a plea of guilty without documentation of the prior court's finding the defendant guilty, even though a sentence was imposed and carried out, was not enough. Under Morgan, it is.

Wright v. State

Appeal from Lauderdale Circuit Court (CC-98-7). Opinion by Judge Baschab (CR-97-1962). Wright's first issue concerned the State's bringing numerous guns and boxes of ammo in to the courtroom during voir dire. This, according to Wright, tainted the jury venire. But since it could not be shown that the entire venire had been tainted by the display, Wright was not entitled to relief. Wright also objected to the jury's having been given a written definition of first-degree robbery. However, Rule 21.1, Ala.R.Crim.P., provides that "[n]either a copy of the charges against the defendant nor the 'given' written instructions shall go into the jury room; provided, however, that the court may, in its discretion, submit the written charges to the jury in a complex case." Based on the trial court's finding that the case was a complicated one, and the jury's request for the definition of first-degree robbery, the court found that the trial judge had not abused his discretion in giving the jury a written copy of the definition.

Prince v. State

Wood v. State

January 14, 1999

List of Cases and Attorneys

Ex parte C.M.

Writ of Mandamus from Jefferson Juvenile Court (JU-96-525.01). Opinion by Judge Long (CR-97-2253). A companion case to Ex parte C.D.M (no relation), above.. C.M.'s petition asking family court to be ordered to stay enforcement of Act DISMISSED AS MOOT

Ex parte C.D.M. and S.D.

Writ of Mandamus from Jefferson Juvenile Court (JU-96-51630). Opinion by Judge Long (CR-97-2402). CDM has asked, in a petition for writ of mandamus, that the juvenile court be ordered to stay enforcement of the amendments to the Community Notification Act. After oral argument, the juvenile court was required to hold a full evidentiary hearing. Following that hearing, the juvenile court held the

amendments to the Act unconstitutional. Thus, CDM had been granted full relief, MOOTing the petition.

January 8, 1999

No opinions released.

January 1, 1999

No opinions released.