

Florida Murder Conviction Based On Hearsay Tossed

By JD Staff

Gilbert Stokes' conviction of murdering 18-year-old Jyron Seider in 2000 during the robbery of a Belle Glade, Florida street dice game was reversed on two grounds by Florida's 4th District Court of Appeals on November 23, 2005. The Court ordered a retrial.

In its unanimous decision, the Court ruled that Stokes had been fatally prejudiced by the trial judge allowing the prosecution to expose the jury throughout the trial to its argument that Stokes' motive was Seider was not a gang member, while Stokes was a member of the Dogs Under Fire (DUF) gang whose headquarters were two blocks from the scene of the murder. The Court ruled that allowing the jury to repeatedly hear direct and indirect forms of the prosecution's inflammatory claim was reversible error, because "the key prosecution witness testified that Stokes socialized with him – a non-DUF member – on "all different corners". . . . No witness testified that Stokes robbed the game because the players were not in DUF or the game's location was outside of DUF's territory."¹ The Court also stated, "Here, the State lacked strong evidence and it is questionable, under the facts of this case, whether the jury would have found Stokes guilty without hearing evidence of his DUF [gang] membership."²

The appeals court also ruled that the trial judge improperly allowed a detective to testify about the unsubstantiated hearsay that people who did not testify at Stokes' trial implicated him in the murder. The Court ruled that was reversible error because, "From this, the jury could have inferred that non-testifying witnesses made accusatory statements to Detective Shatara about the defendant."³ . . . When the only possible relevance of an out-of-court statement is directed to the truth of the matters stated by a declarant, the subject matter is classic hearsay even though the proponent of such evidence seeks to clothe such hearsay under a non-hearsay label."⁴ Interestingly, the Court considered the detective's testimony so prejudicial to Stokes that it constituted reversible error, without even considering that it also deprived him of his constitutional right to confront and cross-examine the alleged and unidentified witnesses.

Leon Harrell was the State's star witness. Harrell was initially charged with Seider's murder, but the charges were dropped after he lived up to his street name of "The Rat" by

naming someone else – Stokes – as the shooter. Harrell claimed he left the dice game after losing all his money. He said he returned with Stokes, who went inside to rob the dice players while Harrell served as the look-out. However, the only DNA profile recovered from the crime scene was linked to Harrell, whose testimony he wasn't present at the time of Seider's murder was impeached by multiple witnesses. Witnesses also identified Harrell as the only person involved in the robbery and murder, and that a man dressed all in black wasn't involved – that person was Stokes.

Two jailhouse informants came forward after Stokes' trial and said Harrell had confessed to them. Stokes filed a motion for a new trial based on the new evidence, but in 2004 a Circuit Court judge ruled the two informants weren't reliable and their testimony wouldn't have affected the outcome of Stokes' trial.

The essence of the appeals court's reversal was that Stokes' jurors likely didn't find him guilty based on evidence of his guilt – but because of his alleged gang membership and the detective's hearsay claim that unidentified persons implicated Stokes in the dice game robbery and fatal shooting of Seider. That conclusion is supported by the fact that the crime scene's physical evidence and eyewitness testimony directly implicates the State's star witness – Leon Harrell – as Seider's murderer.

Stokes' appeal was handled by Gregg Lerman, his trial lawyer. Although Lerman rarely handles appeals, he believed so much in Stokes' innocence that he remained his lawyer. After the appeals court issued its ruling, Lerman said, "I held onto this case because I thought I was right. I had a personal stake in this case because I felt he was wrongly convicted."

As of mid-December 2005, Stokes remains imprisoned while the prosecution decides if they intend to retry him, or offer him his immediate release in exchange for pleading guilty or no contest to a lesser offense that he is innocent of having committed.

JD Note:

One doesn't have to read very far beneath the lines of the Appeals Court's decision to conclude they reversed Stokes' conviction because they don't think he was involved in the crime, and that the State's star witness protected from prosecution is the actual robber and murderer. It is interesting that Harrell's testimony benefiting the prosecution was deemed reliable enough by the trial judge to support Stokes' conviction, while the testimony of two jailhouse witnesses that Harrell admitted to the murder was deemed unreliable by the judge

Marlinga Update

Ex-Prosecutor Marlinga Re-indicted For Bribery

In January 2002, Macomb County Prosecutor Carl Marlinga filed a brief with the Michigan Supreme Court acknowledging that during Jeffrey Moldowan's 1991 kidnapping and rape trial he "may have suffered 'actual prejudice'" from insubstantial expert bite mark testimony.¹

The Court granted Moldowan's habeas petition and ordered a new trial. Moldowan was acquitted after his retrial in February 2003. Moldowan's co-defendant, Michael Cristini, was acquitted after his retrial in April 2004.

Two weeks after Cristini's acquittal, Marlinga, state Senator Jim Barcia, and realtor Ralph Roberts were indicted on federal charges that included bribery and federal campaign finance law violations related to Marlinga's January 2002 Supreme Court brief in Moldowan's case. Marlinga ran for the U.S. Congress in 2002, and federal prosecutors alleged that Roberts, who employed Moldowan's sister, bribed Marlinga to help Moldowan. The bribe was alleged to have been partially masked as a campaign contribution to Barcia in order to avoid Marlinga's federal contribution limits and reporting requirements. (See, Prosecutor Indicted For Bribery After Two Men Exonerated Of Kidnapping And Rape, *Justice:Denied*, Issue 27, Winter 2005.)

In February 2005 a Detroit federal judge ruled the indictment was defective for failing to detail how the defendants were linked

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reviewing Stoke's motion for a new trial. Not only was the testimony of those two men consistent with the eyewitnesses testimony and crime scene physical evidence directly implicating Harrell in Seider's murder, but those two men came forward with no expectation of receiving anything in return – while Harrell effectively testified against Stokes in exchange for having murder charges dropped against him.

Endnotes:

¹ *Stokes v State*, No. 4D02-5068 (Fla.App. 11/23/2005); 2005.FL.0006533, ¶14 <<http://www.versuslaw.com>>

² *Id.* at ¶15.

³ *Id.* at ¶16.

⁴ *Id.* at ¶18.

Additional Sources:

Belle Glade Man Convicted of 2000 Murder Receives New Trial, by Missy Stoddard, *South Florida Sun-Sentinel*, November 24, 2005.

