# *Florida High School Moot Court 2014 Official Case Packet*

## Jesse Davis

## v.

## State of Florida

A collaborative court education project of
*The Florida Law Related Education Association, Inc.*

Special thanks to

*Supreme Court of Florida*
*District Courts of Appeal*
*J. Scott Slater, Hill Ward Henderson*
*The Florida Bar Law Related Education Committee*

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F.L.R.E.A
FLORIDA
LAW RELATED EDUCATION ASSOCIATION, INC.

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# FLORIDA HIGH SCHOOL
# APPELLATE COMPETITION
# 2014 REGISTRATION FORM

_____ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by March 21, 2014.

I. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____ Fax: _____
☐ Team Captain

II. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____ Fax: _____
☐ Team Captain

III. Teacher's Name: _____
School:_____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____ Fax: _____

IV. Attorney Coach's Name: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
Firm Name: _____
E-mail: _____ Phone: _____ Fax: _____

**Brief submitted on behalf of: (Check One)**

**Petitioner or Respondent**

**Return 3 copies of this form and 3 copies of the brief to the address listed below.**

The Florida Law Related Education Association, Inc.
2930 Kerry Forest Parkway, Suite 202
Tallahassee, Florida 32309

**Email one copy in digital form to staff@flrea.org by the due date.**

# RULES AND GUIDELINES

**Introduction**

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument**. In this exercise, you will prepare a brief to the Supreme Court of Florida which will serve as the basis of an oral argument.** The top brief writers in each Appellate District will have the opportunity to present oral arguments in District Court of Appeal competitions. Selected teams will advance in the competition to the state level, with the statewide finalists having the opportunity to present oral arguments in the Florida Supreme Court in Tallahassee. District competitions will be held in early April 2014 and the State Finals will be held April 28-29, 2014 in Tallahassee. Multiple teams may submit briefs from each school; however, each team may submit only one brief. In determining which side you choose, you should read and analyze the cases cited in the case materials.

## A. Rule 1: Teams

1. Each team must consist of two students from the same school. One student should be designated as the team captain.

2. Each team will submit only one brief for either the petitioner or respondent.

3. Teams will need to prepare oral arguments for the party they wrote a brief supporting.

4. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.

5. Team Roster

   Team rosters should be completed and submitted with the briefs by the due date. At registration, teams will be identified only by code.

6. Roll Call

   Students will provide their names and team codes at the beginning of every round to the judging panel. No information identifying the team, beyond the students' names and team code, should be provided to the judges.

## B. Rule 2: The Packet

**1.** Students should assume the moot court packet is complete and factual. Briefs which challenge the validity of issues beyond the scope of the issues questioned in the moot court packet will not be entertained. **Students should not reference information contained in the mock trial materials unless so stated in the moot court packet. The moot court and mock trial packets are not interchangeable.**

2. Students may only utilize the case law referenced in the moot court packet. Any deviation is a rules violation.

3. Students may not construct additional facts not found in the moot court packet specifically. Any information utilized that cannot be fairly inferred from the moot court information packet will be considered beyond the scope, and therefore, a rules violation. Students cannot cite information from the mock trial materials if not explicitly found in the moot court packet.

## C. Rule 3: Competition Format

1. This competition is composed of two phases: (1) the brief-writing phase; and (2) the oral argument phase.

## D. Rule 4: The Brief

1. Three copies of the students' brief must be received by The Florida Law Related Education Association, Inc. no later than March 21, 2014. Additionally, a digital copy should be emailed to staff@flrea.org by the due date.

2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 18 pages inclusive of cover and table of contents. The pages must be letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, address, telephone numbers, and email addresses.

3. Pursuant to Rule 2, briefs may not include any case law beyond what is presented in the packet and may not include any manufactured or researched facts beyond what is found in the moot court packet specifically.

4. Legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices of the packet.

## E. Rule 5: The Oral Argument

1. Two students must participate for a team per round. Both students must speak and address one of the two questions in each round. Only one student may handle rebuttal for petitioner.

2. Each team is given 20 minutes to present their case, as outlined below:

| Speaker | Time Limit |
|---|---|
| *Petitioner* | *17 minutes* |
| Attorney - Question 1 | 8 minutes 30 seconds |
| Attorney - Question 2 | 8 minutes 30 seconds |
| *Respondent* | *20 minutes* |
| Attorney - Question 1 | 10 minutes |
| Attorney - Question 2 | 10 minutes |
| *Petitioner - Rebuttal* | *3 minutes* |

3. Rounds will start on time. If a team, or a portion of the team, fails to appear within ten minutes of the time indicated, the team will compete with an incomplete team. If no student from a team appears within that time limit, the team will be judged to have forfeited the round, and bye round scoring will apply to the other team.

4. Two students will present during any one round of competition. Each student will address one of the two questions presented in the brief. Both students must speak during the oral argument. If the second student does not speak during the course of the oral argument, that student will receive a score of zero (0).

5. No communication should occur between students participating in the round and other team members, coaches, or anyone else in the audience outside the bar. Any communication with anyone outside of the partner student during that round will constitute a rules violation.

6. Students should display dignity and respect to the judges, staff, and other competition personnel.

   Additionally, teams should respect each other.

7. Dress should be professional, courtroom attire.

8. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet.

9. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

## F. Rule 6: Videotaping/Photography

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.**

2. When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

## G. Rule 7: Viewing an Argument

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Advisory Committee, are not allowed to view other teams in competition so long as their team remains in the competition.

2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

## H. Rule 8: Decisions

1. All decisions of the judges are final.

## I. Rule 9: Team Advancement

1. Teams will be scored first on their written briefs to determine if they advance to the oral argument presentations.

2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located on the website. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district may be given the opportunity to compete in the district competition.

3. During the oral argument competition, a panel of judges will score student performances in each round. The team that receives the higher score from each judge will be awarded that judge's ballot. The team with highest number of ballots wins the round.

4. At the end of the competition, the judges will consult to recommend the team or teams from the district to advance to the state competition.

5. Briefs will be scored and a Best Brief award presented at the state competition consistent with the practices outlined herein.

6. The state finals will incorporate one preliminary round and one final round of competition. The top two teams will be determined by the panel of DCA judges evaluating the preliminary rounds. These top two teams will meet in the final round of competition. The team receiving the most ballots in the final round will win the competition.

## J. Rule 10: Effect of a Bye Round

1. A "bye" becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round will be given a win and the

number of ballots and points equal to the average of all winning team's ballots and points of that same round. Bye rounds will be avoided if at all possible to allow for each team to compete directly.

**K. Rule 11: Eligibility**

1. All students on a team must be enrolled in the same public or private school in the district for which they are competing.

2. Students must be enrolled in a Florida high school in order to be eligible.

*All questions should be submitted in writing to ABPflreaED@aol.com or staff@flrea.org.*

**NOTE: FLREA strongly encourages the use of an appellate attorney during the coaching process. The FLREA website contains valuable resources to assist you in preparing your brief, as well as your oral argument.**

# SOURCES OF LEGAL RESEARCH

The legal authorities you will be using as your source of research and for purposes of citing to the Court are included or referenced in the case materials.

You may also read articles and legal authorities from other sources and jurisdictions to get ideas and arguments for your brief, but these materials may only be used to get ideas or to enhance your understanding of the legal issues. They may not be cited as authority in this contest. Your Attorney Coach may wish to suggest reading material. While you are encouraged to explore other sources, there is no requirement that you do so.

Information on research using primary and secondary sources is enclosed in the Appendices for your review.

Additionally, you can utilize on-line research through a variety of sources. You should be able to find most of the cited cases at **www.findlaw.com**, under Laws: Cases and Codes. From the Findlaw "Cases and Codes" page, scroll down and click on the U.S. Supreme Court link and pull all cases with (i.e. 123 U.S. 456). For all Circuit Court cases a ___F.2d, F.3d or F.Supp., click on the applicable Circuit Court link. For example, *Doe v. v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

**Remember that in preparing your brief, you can only use the legal authorities included or referenced in these materials. You can research other authorities but you should only use authorities cited in these materials in preparing your briefs and arguments.**

# RELEVANT LEGAL AUTHORITY

In developing briefs and oral arguments, student competitors may utilize any authority cited in the mock appellate opinion included in the case materials, including federal and state case law (and various authorities cited therein), federal and state constitutional provisions, and federal and state statutes. Students should be careful to explore the authorities independently as opposed to relying solely on the context in which they are presented in the mock appellate opinion.

Case law mentioned in the materials may be utilized by students in the development of briefs and oral argument. Additional cases may be added by the state committee.

**Regarding the facts of the underlying case, the students do not need any facts other than what is provided in the mock appellate opinion.**

**Students are not allowed to use facts from the mock trial case unless specifically mentioned in the moot court package.**

**Florida Statute § 893.135(1)(c)**

**893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—**

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result, such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss.775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an

isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of any person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142.

Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

# FORMAT OF THE BRIEF

Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 18 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, addresses, telephone numbers, and email addresses.

Do not be overly concerned with legal citation; mistakes will not hurt your score. You may even choose not to use legal citation, so long as you make it clear what case you are referencing**.**

If you do try to use legal citation, here are some pointers – you may want to use the ***Blue Book, a Uniform System of Citation,*** (18th ed., 2005), which should be available at any local law library for reference. However, you may simply follow the form of citation used in the sample brief.

When first citing a U.S. Supreme Court case, you should cite to the U.S. Reporter. For example, on page 6 of the sample brief, the petitioner cites to "*Jones v. United States*, 463 U.S. 354, 364 (1983)." The number 463 is the volume number, "U.S." stands for the U.S. Reporter, the books in which the Supreme Court cases are published, 354 is the first page of the cited case, and 364 is the exact page in the case upon which either the quoted language or the referenced portion of the case appears. *All subsequent cites* to the same case, immediately following that full cite, should be "*See id*." cites. However, if the referenced portion of the case is on a different page, your cite should appear as "*See id*. at _____" (that specific page on which the quote or reference is located).

If a case has been previously cited but not immediately previously cited, then a shortened cite form should be used. For example, in the sample brief, *Jones v. United States*, is cited on page 6, followed by a "*See id*." cite. Then on page 7, the *United States v. Ward* case is cited in its entirety. The petitioner then must again cite to *Jones v. United States*. If the petition were to use a "*See id*." cite there would be confusion because the reader would assume that the petitioner was referring to the *Ward* case, the immediately preceding case. Therefore, the petitioner abbreviated the case name and simply lists the volume number of the U.S. Reporter, 463 and only the specific page in the case on which the reference appears after the word "at." If the petitioner went on to cite to the *Jones* case again, he or she could once again use a simple "*See id*. at _____" cite.

**Again, it is not necessary that you follow the exact legal citation form used in the sample brief.** Do the best you can. We are more concerned with the arguments you choose to make.

You will note that on the cover page of the sample brief, in the lower right hand corner, the petitioner's attorney has only identified himself or herself as counsel for petitioner. **You should include your full name, followed by the names and address of your high school, telephone numbers, and email addresses where you can be reached both at school and home.**
**Briefs should conform to the following outline:**

# SECTIONS OF THE BRIEF

## Cover Page

Follow the guidelines and see sample cover page.

## Table of Authorities

- List cases you used in your arguments to support your position.
- List relevant constitutional and policy provisions.

## Opinion Below

Include a short statement of the proceedings in the lower court/court below and the ruling or judgment of the trial court which is being appealed from.

## Constitutional and Policy Provisions Involved

Spell out the relevant provisions in the U.S. Constitution and policy provisions involved in the case from either the perspective of the petitioner or respondent.

## Questions Presented

Recite the two constitutional questions or issues on appeal before this Court.

## Statement of the Case

This will encompass a statement of the important issues and facts before the Court from either Petitioner's or Respondent's perspective. This section should incorporate (1) a concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief; (2) a short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed from; (3) a concise statement of the issues before the Court on appeal from the Petitioner's or Respondent's perspective; and (4) a concise statement of the important facts. This section should be presented in a light favorable to your side and contentions in your case.

## Summary of Argument

Include three or four paragraphs highlighting a summary of your arguments supporting either the Petitioner's or Respondent's position. Essentially this is a short synopsis of your arguments which will follow. See below.

## Arguments

This portion of the brief should discuss your position on the facts, arguments, and legal authorities (statutes and case law) which support your position on the questions presented. If the case law is favorable to your side, show how the prior cases are applicable to the facts or analysis of that case from the present case. You may wish to select the cases which most strongly support your arguments.

## Conclusion

This part is a short summary of your answers to the issues on appeal (the questions presented) and should consist of only a few sentences. It is a very concise statement of why you want the appellate court to agree with you. **The conclusion should also state what specific relief is being requested.**

# SUBMITTING THE BRIEF

Briefs should be submitted in the required format to The Florida Law Related Education Association, Inc. and should be **received by March 21, 2014**. The winning brief writers will be notified for dates of the local oral arguments.

Submit three copies of all briefs to the following address.

The Florida Law Related Education Association, Inc.
2930 Kerry Forest Parkway, Suite 202
Tallahassee, Florida 32309

**Additionally one electronic version must be submitted by the due date to staff@flrea.org.**

**For any questions, submit in writing to ABPflreaED@aol.com or staff@flrea.org.**

# BRIEF WRITING PRIMER

There are two main ways to argue your position to the appellate court: through the appellate brief and through the appellate oral argument. They serve different functions and, to an extent, courts look for different things from each function.

Of the two functions, the brief is the more important. It succinctly reviews for the court what the case is about (what the relevant facts and legal issues are), what the law is (for each issue raised by the appeal), and what relief you are seeking. It really does not matter which side of the case you are on or which issue you are addressing. Your job is to persuade the court that your position is correct – that is, that the facts and relevant law support the relief you seek and that the outcome you want makes sense.

The brief is your chance to shine. It is your chance to show the court that you understand your issue, that you have done the necessary research into it, and that you can communicate the argument in a scholarly way. The court looks to you for guidance, and it is your responsibility to convince the court that you can be trusted.

Let us go over some of the more important factors that judges look to when reading/grading an appellate brief.

**Effective Organization of the Facts/Procedural History**

Judges are busy and they look to you to narrow down the facts to those that are most important to deciding the issue. Have you summarized for the court all the facts that are relevant to your issue and that the court needs to know about in order to decide the case? Most cases have a lot of facts, but not all of those facts are relevant to the issue being raised on appeal.

For example, suppose your client was convicted of running a red traffic light and you are appealing that conviction. Does it make a difference how large the tires on his car were? Probably not (it might be relevant to a speeding ticket, but not running a red light). On the other hand, is it important to know what the weather and traffic conditions were at the time, or whether the police officers were in a position to see the intersection at the time that you client drove through it? Probably. Your ability to recognize a relevant or essential fact and to communicate it in an easy-to-understand way is very important to your ability to persuade the court.

**Persuasive Use of Pertinent Facts/Diffusing Damaging Facts**

Do not ignore bad facts. If they are important to the case (and, of course, relevant to the issues on appeal), someone will find them. Probably your opposing counsel. It will make you look less than honest with the court if you do not disclose bad facts. Your job is to find a way to be candid, but to emphasize the facts that support your position. Finally, do not merely list the essential facts. Weave them into a story. Make the brief interesting to read.

**Issue Recognition**

The way that you frame your issue will direct the court to the specific question it must decide in the case. Once you have identified the issues to be raised on appeal, state them clearly in the

brief. Be direct and forceful, without being wordy. Use active verbs. Remember that judges are very busy. They do not often have the time to wade through wordy, vague, or repetitive briefs.

The way you phrase the issue for the judges sets the stage for everything to follow in the brief. The issue also determines what your analysis will be. You have to make sure that your legal analysis and the conclusion that you reach parallel the issue that you raise.

## Legal Analysis

Now that you have framed the issue that you want the appellate court to address, you have to lay out an analysis that is direct, logical, and persuasive. Your reader should be able to follow the analysis and, at the end of it, reach the same conclusion that you did.

Remember that your analysis revolves around the law. What is the law on the subject of your argument/on your issue? You either want the appellate court to apply the existing law (and perhaps extend it to a new set of facts and application) or to explain why, based on the distinct facts in your case, the existing law does not apply.

You must be clear in your thinking and direct in your writing.

## Persuasive Use of Authority

Courts are guided by the law, and it is your job to tell them what the law is, how the facts of the cases that you cite are either substantially similar to your facts or are so different (in important ways) that the legal conclusion in those cases should not apply to your case. Your Issue Booklet identifies the leading cases for the issue you have raised. Your job is to explain to the court why the conclusions in those cases do or do not control the outcome in your case.

To do this, you may need to discuss the facts of the more relevant cases. Discussing the facts of those cases may help the court in your case to determine whether the holding in the prior cases apply to your circumstances.

Remember that you, acting in the role of a moot court lawyer, are, essentially, stepping into the same role as an officer of the court that all attorneys step into. While you represent a client, you also play an important role in helping to shape the law. So be candid, thorough, and forceful.

## Clarity, Conciseness and "Readability"

In writing, let the first sentence of each section be your thesis sentence. State what your proposition is and let subsequent sentences support your thesis statement. End your paragraph with a conclusion that repeats your thesis statement.

Once you have completed your brief, be prepared to review and edit it. Revision means "to see again." You can revise your writing most effectively if you can figure out a way to see it again. When we review something we have written, however, it is often difficult. Not only do we have what we have written on paper, but we also have what is still in our mind.

To distance ourselves from what we have put on the printed page from what is in our mind, we need to see what we have written in a different way. For example, instead of looking at our

complete message, we need to review what we have written differently, i.e. sentence by sentence. As we review each sentence individually, we can ask ourselves the following questions: 1) did the sentence say what I wanted it to say?; 2) did I say it in a clear manner?; 3) could I have said what I wanted to say in fewer words?; and 4) could I have said it better? When we look at what we have written sentence by sentence, we will often find that we wrote many things that were unnecessary. For example, in the preceding sentence, could I have just say "…we'll find we wrote many unnecessary things."

## Organization, Headings and Subheadings

No one likes to read a brief that is nothing more than a blob of words (imagine this Help Guide without any headings). Your readers are human and like to be able to focus on certain ideas at a time. As you take notes regarding the issues you are treating, therefore, you should note what the different issues are and organize your writing around each issue. To alert your reader that one issue is ending and another beginning, you should use headings and subheadings. Headings and subheadings not only help you telegraph to your reader that a change in issues or the treatment of a sub-issue is coming up, but help you frame your brie around the issues that will aid the logical organization of your full brief.

## Compliance with Rules

Let's be honest. Following your appellate brief-writing rules can be less intellectually challenging than writing other school papers and you might even find it boring. Following the rules, however, is vital to practicing attorneys. Attorneys are required to follow different sets of rules to ensure a certain standard is followed that will be fair to everyone. For example, a Florida attorney writing a brief in state court has to follow the Florida Rules of Appellate Procedure (in federal court, the Federal Rules of Appellate Procedure apply). Because attorneys have to learn and follow court (and their Bar Association) rules, you too are being judged on your willingness to learn and follow you "quasi-court" rules for your moot court competition.

## Spelling and Grammar

Spelling and grammar are important to clarity and presentation. Errors in spelling or grammar have a negative effect on your reader. A reader who sports spelling and grammar errors may believe that the writer lacks credibility. The reader may question, therefore, the soundness of that writer's legal arguments. In this day of spell-check and automated grammar-check tools, there is no excuse (other than competition rules) not to use them, and using those tools will enhance your credibility with the reader. Remember, though, to still proofread: spell-check cannot substitute to careful review of your final brief. The appearance of your document will also affect your credibility and opportunity to persuade. People do see the small stuff.

## Citation Style

Are the citations sloppy? Are your citations proper (do they follow the rules provided)? Did you pay attention to detail? Again people see the small stuff and are affected by anything that might affect your credibility. Remember when doing your citations (as well as other portions of your brief) that you should base your decisions on the rules, not your own preferences.

**Good luck!**

# Sixth District Court of Appeal

## State of Florida

Opinion Filed December 9, 2013

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Appeal No. 6D13-1252

Lower Tribunal No.
13-0011-H

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**JESSE DAVIS**,
Appellant,

vs.

**STATE OF FLORIDA**,
Appellee.

Appeal from the Circuit Court of the Twenty First Judicial Circuit In and For Spring County, Florida.

Before JUDGES HAMMER, HARRISON, and SLATER.

HAMMER, Judge.

Appellant Jesse Davis ("Davis") was convicted of trafficking in oxycodone pursuant to section 893.135(1)(c), Florida Statutes, and then sentenced to 25 years in prison and a fine of $500,000. On appeal, Davis makes two arguments seeking reversal.

First, Davis contends the trial court erred when it denied his motion to suppress the evidence of drugs on the ground that the drugs were fruits of a detention that was unconstitutional under the Fourth Amendment to the United States Constitution and the companion provision in Florida's Constitution. Second, Davis contends his sentence is cruel and unusual punishment and therefore unconstitutional under the Eighth Amendment to the U.S. Constitution and the companion provision in Florida's Constitution.

For the reasons set forth below, we affirm the conviction and sentence.

### I. Facts and Procedural History

In early 2013, Springdale North High School implemented an "Anonymous Tip Hotline" for students to use for reporting drug possession and use, due to a recent increase in drug use by

the school's students. The hotline uses a system from T2T Communications that features a talk-to-text technology that allows students to call a number, leave a message, and then the message is transcribed into an e-mail. The e-mail is sent to a dedicated e-mail address accessible exclusively by school administration, and the voice message is automatically deleted. This system was designed to ensure anonymity of the caller, thereby encouraging the students to use the hotline.

On the morning of March 30, 2013, Springdale North administrators received an e-mail from the tip hotline that stated:

> YOU MIGHT WANT TO CHECK OUT JESSE DAVISS TRUCK SAW SOME DRUGS UNDER THE BACK OF THE PASSENGER SEAT WHEN I WAS IN THERE RECENTLY AND HEARD JESSE WILL BE USING AFTER SCHOOL TODAY IN THE OVERFLOW LOT

The school principal, Lynn Sanderson, contacted Officer Taylor Carpenter of the Springdale Police Department shortly after the message e-mail came in, and informed him of the tip accusing Davis of drug possession. Davis was a senior at Springdale North and 17 years old at the time. Officer Carpenter came to the school an hour later and met with Ms. Sanderson for approximately 15 minutes in her office.

Ms. Sanderson expressed that she was surprised to hear Davis implicated because he was an exceptional student, in the running to be named valedictorian, and co-captain of the school soccer team. Officer Carpenter then asked if there was any way to tell who provided the tip, and Ms. Sanderson explained the way the anonymous tip hotline worked, that she did not know for sure who provided the tip, but that another student, Cam Ryder, rode to and from school in Davis' truck nearly every day. Officer Carpenter learned that Ryder was a long-time friend of Davis, was also in the running for valedictorian, and shared the co-captain role on the soccer team. Officer Carpenter testified at the hearing on Davis' motion to suppress that, based on the information he learned from Ms. Sanderson, he believed the tip was most likely provided by Ryder. The officer did not interview or question Ryder until after the arrest, however.

After their meeting in the school office, Ms. Sanderson showed Officer Carpenter the lot where Davis parked his truck that day. The lot was not on school property. It was on a vacant piece of property that bordered the school's campus that was commonly used for student overflow parking by students, by consent of the property owner. About 30 minutes before school ended that day, Officer Carpenter parked an unmarked police car in the overflow lot about 20 yards away from Davis' truck and waited for Davis to arrive at his truck after school.

At approximately 3:15 p.m., Officer Carpenter observed Davis walk to the overflow lot with several other students who were exiting school property to get to their vehicles. Davis walked to his truck alone, paused before opening the driver's side door, and, according to Officer Carpenter, looked around "suspiciously like he was checking to see if anyone was watching him." Davis then got in his truck, turned on the engine, and remained parked for approximately 10 minutes. All other vehicles had left the lot. Officer Carpenter then observed Davis reach into the back seat area on the passenger side. Because Davis' truck had what the officer called "slightly tinted windows," he could not see whether Davis picked up or grabbed anything.

At this point, Officer Carpenter exited his vehicle and approached Davis' truck. He knocked on the window, and Davis was startled and appeared to drop something on the floor of his truck. Davis then rolled the window three quarters of the way down. Officer Carpenter asked if Davis was having car problems, and Davis said he was not. The officer asked Davis why he was not leaving the lot. Davis paused for a few seconds and then said he was waiting for a phone call from someone. Officer Carpenter believed Davis appeared "nervous," was "being short" in conversation, and, at one point, glanced down at the floor by his feet while he was answering the officer's question. Officer Carpenter did not observe or smell smoke or any other obvious sign of drugs or drug use.

The officer instructed Davis to get out of the truck and to stand at the back of the vehicle. He asked Davis if he could search the vehicle, and Davis consented. During the search, the officer found a small brown paper bag stuffed barely under the passenger side seat. Inside the paper bag was a plastic bag containing a number of pills, which were later determined to be oxycodone. The officer found no drugs on the floor of the front driver's side, only Davis' cell phone and some fast food wrappers.

Davis was subsequently arrested and charged with trafficking in oxycodone under section 893.135(1)(c), Florida Statutes. The prosecutor exercised his discretion under section 985.227(1)(b), Florida Statues, and charged Davis as an adult. Prior to trial, Davis moved to suppress the evidence of oxycodone found in his truck on the ground that the officer's investigatory stop was in violation of the Fourth Amendment. The trial court denied the motion and proceeded to trial. At trial, Davis renewed his motion, which the trial court denied. Davis was convicted.

Davis was then sentenced to 25 years in prison and a fine of $500,000. Because this was the mandatory minimum sentence under section 893.135, the trial judge had no discretion to impose a lesser sentence or consider mitigating factors, absent consent or waiver from the State, which was not given.

## II. Standard of Review

"In reviewing the order denying the motion to suppress, we defer to the trial court's factual findings if supported by competent, substantial evidence; we review the trial court's applications of the law to those factual findings *de novo*." *K.W. v. State*, 906 So. 2d 383, 384 (Fla. 2d DCA 2005).

We review the constitutionality of Davis' sentence *de novo* as well. *Guzman v. State*, 110 So. 3d 480, 481 (Fla. 4th DCA 2013).

## III. The Investigatory Stop Did Not Violate the Fourth Amendment

The Fourth Amendment protects citizens from, among other things, unreasonable searches and seizures by the government. U.S. Const., amend. IV. Florida's Constitution contains a similar provision, Article I, Section 12, which is "construed in conformity with the identical rights contained within the Fourth Amendment." *Hadley v. State*, 43 So. 3d 113, 114 (Fla. 3d DCA 2010) (internal quotations omitted).

One situation where Fourth Amendment rights are implicated is where a police officer conducts an investigatory stop, also known as a "*Terry* stop," named after the case of *Terry v. Ohio*, 392 U.S. 1 (1968). An investigatory stop occurs when a police officer stops or detains an individual to investigate possible criminal behavior. *Hadley*, 43 So. 3d at 114. To justify such a stop, "there must be a reasonable suspicion, defined as a particularized and objective basis for suspecting the particular person stopped of criminal activity based upon the totality of the circumstances." *Campuzano v. State*, 771 So. 2d 1238, 1241 (Fla. 4th DCA 2000) (internal quotations omitted). As explained by the United States Supreme Court:

> The officer making a *Terry* stop must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means "a fair probability that contraband or evidence of a crime will be found," and the level of suspicion required for a *Terry* stop is obviously less demanding than for probable cause.
>
> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

*Alabama v. White*, 496 U.S. 325, 329-330 (1990) (citations and quotations omitted).

Here, Davis' Fourth Amendment rights were not implicated by Officer Carpenter knocking on Davis' truck window and engaging in discussion with him. *Jacoby v. State*, 851 So. 2d 913, 915 (Fla. 2d DCA 2003) ("This type of consensual police-citizen encounter does not implicate constitutional safeguards."). But once the officer instructed Davis to exit his vehicle, the encounter became an investigatory stop or detention, thereby implicating constitutional rights. *Id.* The question in this appeal is whether the investigatory stop of Davis was based on reasonable suspicion. We hold that it was.

Our finding that the stop was supported by reasonable suspicion begins with an analysis of the tip received through the school's hotline.

The Florida Supreme Court has held that "[n]ot all tips are of equal value in establishing reasonable suspicion; they may vary greatly in their value and reliability," and the classification of the call or report is of critical importance. *State v. Maynard*, 783 So. 2d 226, 229 (Fla. 2001) (quotations omitted). Anonymous tips are typically at the low end of the reliability spectrum. "Because the veracity of persons supplying anonymous tips is by hypothesis largely unknown, and unknowable, anonymous tips have a low degree of reliability. For this reason, anonymous tips justify a *Terry* stop only when they are sufficiently corroborated through independent police investigation that, for example, may confirm some details of the tip." *Hadley*, 43 So. 3d at 114-15 (citations and quotations omitted). In other words, "[i]nformation from an anonymous tipster is not per se unreliable," *K.W. v. State*, 906 So. 2d 383, 384 (Fla. 2d DCA 2005), but it must exhibit sufficient indicia of reliability. "The reliability of such a tip is evaluated, among other considerations, on its degree of specificity, the extent of corroboration of predicted future

conduct, and the significance of the informant's predictions." *Kimball v. State*, 801 So. 2d 264, 266 (Fla. 4th DCA 2001).

We find that the tip received from the school's hotline in this case was sufficiently reliable given the totality of the circumstances. The tip identified a reasonable amount of specifics, including the person of interest (Davis) and the precise location of the drugs (under the back of the passenger seat in Davis' truck). The tip also predicted where and when Davis would be after school – in the overflow lot adjacent to the school property – which was corroborated by Officer Carpenter's investigation.

Davis argues that these circumstances do not show reliability, but we note the U.S. Supreme Court in *White* found reasonable suspicion in a situation that involved an anonymous tip similar to the one in this case, in terms of the quantity and quality of details and predictions. 496 U.S. at 327 (anonymous tipster informed police that subject would be leaving an apartment at a particular time, driving a certain make and type of vehicle to a particular motel, with cocaine in her possession; police saw the subject leave the apartment building, get into the identified make and type of vehicle, and drive the most direct route to the identified motel, at which time the police stopped the vehicle); *see also Campuzano*, 771 So. 2d at 1242 ("The facts corroborated by the police in this case present no less 'indicia of reliability' than those in *White*.").

We also find *Florida v. J.L.*, 529 U.S. 266 (2000), relied on by Davis, distinguishable because the anonymous tip in that case, reporting that the suspect was carrying a concealed gun, merely described the suspect's appearance and current location. Among other things, the tip "neither explained how he knew about the gun nor supplied any basis for believing he had information about" the suspect. *Id.* at 271. Here, by contrast, the tip indicated the informant had recently been in Davis' vehicle.

That fact is also important for another reason. Although the tip was anonymous in a technical sense, the fact that the tip indicated the informant had recently been in Davis' vehicle narrowed the potential class of likely informants, particularly given the tip came through the school's hotline. As explained by Justice Kennedy in his concurring opinion in *J.L.*, 529 U.S. at 275-76, when the circumstances make it so that the identity of an informant could be revealed or traced, that adds to the reliability of the tip. Here, we find enhanced reliability due to the informant offering information that put his or her identity at risk. *Id.* ("If an informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip.").

Finally, Officer Carpenter's investigatory stop was based not only on the tip, but also his own investigation. He observed Davis exhibiting suspicious behavior consistent with possible illegal behavior, and acting nervously and furtively when conversing with the officer. Such observations can support reasonable suspicion when combined with an anonymous tip. *Hadley*, 43 So. 3d at 117-18 (finding reasonable suspicion because, among other things, the defendant "looked alarmed with an 'oh crap' expression and began walking quickly in the opposite direction," when approached by the officer). Officer Carpenter's observations also make this case distinguishable from certain cases relied upon by Davis, which found no reasonable suspicion for an investigatory stop, but involved no evidence of suspicious behavior. *E.g.*, *K.W.*, 906 So. 2d at 384 ("Apart from the anonymous tip, the officer had no reason to believe that the juveniles were engaged in criminal activity."); *Young v. State*, 841 So. 2d 689 (Fla. 2d DCA 2003) ("Mr. Young was not acting suspiciously in any manner").

In sum, the anonymous tip, combined with independent police observation, was sufficient to provide reasonable suspicion for Officer Carpenter to conduct an investigatory stop of Davis.

## IV. Davis' Sentence Does Not Violate the Eighth Amendment

The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishments." This prohibition "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560 (2005). Florida's Constitution likewise contains a prohibition against cruel and unusual punishments, which must be interpreted in conformity with the decisions of the United States Supreme Court interpreting the Eighth Amendment. Art. I, § 17, Fla. Const.

In this case, Davis argues that his sentence of 25 years and a $500,000 fine is unconstitutional under the Eighth Amendment because it is a mandatory minimum sentence that was imposed on him for a crime committed when he was a juvenile – *i.e.*, under the age of 18. In support of his argument, Davis claims to rely on principles set forth in the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

"*Miller* is the latest in a line of recent Supreme Court cases that address the constitutional limits on punishing juveniles." *Hernandez v. State*, 117 So. 3d 778, 782 (Fla. 3d DCA 2013). In 2005, the Court held that the Eighth Amendment prohibits punishing a juvenile with the death penalty. *Roper*, 543 U.S. 551. Then, in 2010, the Court held that the Eighth Amendment prohibits sentencing a juvenile to life in prison without parole for committing a non-homicide crime. *Graham v. Florida*, 560 U.S. 48 (2010).

In *Miller*, the Supreme Court went another step further. It held that the Eighth Amendment prohibits sentencing a juvenile to life in prison without parole (which, after *Graham*, could only be imposed upon juveniles convicted of a homicide offense), if the imposition of the sentence is mandatory. *Miller*, 312 S. Ct. at 2469. The Court found that, when a state law mandates life-without-parole when a juvenile is tried as an adult, it prevents a trial court from considering the juvenile's "youth and its attendant characteristics, along with the nature of his crime." *Id.* at 2460. The Court explained:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct in the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

*Id.* at 2468 (citations omitted).

*Miller* concluded that, "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence [*i.e.*, life-without-parole]," a mandatory sentencing scheme "poses too great a risk of disproportionate punishment" under the Eighth Amendment. *Id.* at 2469. Because of "children's diminished culpability and heightened capacity for change" as recognized in *Graham* and *Roper*, individualized sentencing is required before a juvenile can be sentenced to life without parole. *Id.* Although *Miller* does not prohibit such a sentence on a juvenile, the trial judge or jury is now required "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

Davis argues that the principles set out in *Miller* (as well as *Graham* and *Roper* before it) regarding a juvenile's "diminished culpability and heightened capacity for change," and *Miller*'s reasoning about how a mandatory sentencing scheme prevents consideration of those characteristics of youth, should equally apply here to render his sentence for oxycodone trafficking unconstitutional under the Eighth Amendment. We do not agree.

The fundamental problem with Davis' argument is that *Miller* addressed a sentence of life in prison without the possibility of parole, not a sentence to a term of years. Although *Miller* made several comments about how children must be viewed differently for sentencing purposes, those comments were all made in the context of addressing a sentence of life without parole. Indeed, the Supreme Court made clear throughout its opinion that its disapproval of mandatory sentencing schemes applied to situations where a juvenile was facing life in prison. *E.g. Miller*, 132 S. Ct. at 2466 ("By removing the youth from the balance… These laws prohibit a sentencing authority from assessing whether *the law's harshest term of imprisonment* proportionally punishes a juvenile offender."), 2469 ("By making youth (and all that accompanies it) irrelevant to imposition of *that harshest prison sentence*, such a scheme poses too great a risk of disproportionate punishment."), 2475 ("*Graham*, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing *the harshest possible penalty* for juveniles.") (emphasis added in each parenthetical). In short, *Miller*'s holding is limited to life-without-parole sentences imposed on juveniles.

We find unpersuasive Davis' arguments to extend *Miller*'s application to his term-of-years sentence. A term-of-years sentence, particularly one like Davis' that leaves decades of life left after release from prison, is drastically different from life in prison in terms of the severity and permanence of the punishment. Indeed, life without parole is not too far removed from the harshest punishment there is – the death penalty. As the Supreme Court has recognized, life-without-parole sentences "share some characteristics with death sentences that are shared by no other sentences." *Graham*, 560 U.S. at 69-70. "[T]he sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration . . . ." *Id.* The Court further noted how especially harsh a life sentence is for a juvenile when compared to an adult, because he will almost inevitably serve "more years and a greater percentage of his life in prison than an adult offender." *Id.* Davis' sentence of 25 years in prison without parole does not share these qualities.

Both the U.S. Supreme Court and the Florida Supreme Court have long held that mandatory minimum sentences are not unconstitutional merely because they are mandatory. *E.g., Harmelin v. Michigan*, 501 U.S. 957, 995 (1991) (upholding a mandatory life-without-

parole term for possessing more than 650 grams of cocaine; "a sentence which is not otherwise cruel and unusual does not become so simply because it is mandatory"); *State v. Benitez*, 395 So. 2d 514, 517-18 (Fla. 1981) (rejecting argument that "mandatory minimum sentences unconstitutionally eliminate the exercise of discretion in sentencing"; "This Court has consistently upheld mandatory minimum sentences, regardless of their severity, against constitutional attacks arguing cruel and unusual punishment."). Indeed, *Benitez* upheld the constitutionality of the very statute at issue in this case – section 893.135 – and the mandatory minimums contained therein. And recently, Florida's Second District Court of Appeal followed suit, specifically as it pertains to trafficking in oxycodone. *Paey v. State*, 943 So. 2d 919, 923-927 (Fla. 2006) (rejecting argument that mandatory minimum sentence of 25 years in prison for trafficking in oxycodone was cruel and unusual punishment).

The U.S. Supreme Court has created exceptions to this rule – and required individualized sentencing – in only two circumstances: when imposing the death penalty (*Woodson v. North Carolina*, 428 U.S. 280 (1976)) and when imposing life without parole against juveniles (*Miller*). We think the unique characteristics of those sentences warrant them being in a class of their own.

We recognize that a mandatory sentence of 25 years in prison for a drug offense is a severe penalty, particularly for a juvenile. We are also aware of the strong movement in Florida to abolish mandatory minimums for drug crimes and the outspoken view of many that they are grossly unfair, even draconian. But it is not our place to be the arbiter of such matters or to legislate from the bench. Our job is to interpret and apply the law as it stands, and there is no precedent supporting the conclusion Davis requests that we reach.

In short, we will not expand *Miller*'s reach beyond that which was at issue in that case – *i.e.*, life-without-parole sentences for juveniles. As stated by another Florida appellate court:

> We recognize that the Supreme Court's constitutional prism of "the evolving standards of decency that mark the progress of a maturing society," may well result in a subsequent expansion of the *Graham* and *Miller* precedents. If so, it is within the Court's authority to make that pronouncement. For now, the Eighth Amendment's proscriptive reach does not constitutionally extend far enough to encompass [the] sentence [at issue].

*Walle v. State*, 99 So. 3d 967, 973 (Fla. 2d DCA 2012) (citations omitted). We therefore find that Davis' sentence does not violate the Eighth Amendment's prohibition on cruel and unusual punishment.

## V. Conclusion

For the foregoing reasons, Davis' conviction and sentence is AFFIRMED.

HARRISON, J., CONCURS.

**SLATER, C.J., DISSENTING.**

I respectfully disagree with the analysis and findings of the majority and would reverse Davis' conviction and sentence. I would find both that the investigatory stop which led to the

evidence of oxycodone was unconstitutional under the Fourth Amendment and that Davis' sentence was imposed in violation of the Eighth Amendment.

I address each of these issues in turn.

## I. The Investigatory Stop Violated Davis' Fourth Amendment Rights

The majority finds reasonable suspicion for the investigatory stop in this case by relying on both the anonymous tip and independent police observations. Both aspects, whether considered separately or collectively, fall well short of supplying a reasonable suspicion that Davis was committing criminal activity.

The anonymous tip from the school's tip hotline can hardly be said to have indicia of reliability.

First, the tip is incredibly vague and provided barely any details or specifics. As a fundamental matter, the tip did not even state that drugs were in Davis' truck on the day in question. It said the school "might" want to check out Davis' truck because the informant saw drugs in there "recently." That does not tell the school, or law enforcement, that Davis is currently in possession of drugs and, at most, advises that he "might" be. Indeed, one cannot tell when the informant saw the drugs because no one knows what the informant means by "recently." Further, although the tip advises Davis had "drugs" in the car at some undefined point in time, it does not specify *what kind* of drugs.

Second, the tip does not provide any meaningful predictive information of Davis' future activity that was corroborated by police observations. Case law on *Terry* stops demonstrates the significance of corroborated predictive information. Indeed, the seminal case on the issue – *White* – gave special emphasis to this factor:

> What was important was the caller's ability to predict respondent's future behavior, because it demonstrated inside information – a special familiarity with respondent's affairs. . . . Because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities. When significant aspects of the caller's predictions were verified, there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop.

496 U.S. at 332 (citations omitted); *accord Jacoby*, 851 So. 2d at 915-16 ("the tip must contain some predictive information that gives the police the means to test the informant's knowledge and credibility").

Here, the tip's prediction begins by stating the informant had "heard" Davis would be using drugs. There is, of course, no indication of where the informant heard this from or any means to know or test the credibility of the person who told the informant this information. Thus, from the outset, the tip is inherently untrustworthy and unreliable.

Even putting that aside, the tip claims Davis would be using drugs after school in the overflow lot, but does not specify where, whether he would be doing so in a vehicle (and if so, whose vehicle), or whether he would be alone or with other individuals. It also does not specify the particular time of day Davis would be using drugs, and instead merely predicts it would happen "after school." The absence of these kinds of detailed predictions are what distinguish this case from the ones in which courts find reasonable suspicion. *E.g.*, *Kimball*, 801 So. 2d at 267 (finding reasonable suspicion where tipster provided detailed predictions; "While someone may predict that a person will stop and get gas, it is unusual for that person to be able to predict the exact time and location that this will occur.").

Also, although the tip advised that drugs were seen in the back of the passenger side seat of Davis' truck, which turned out to be correct, that fact was not corroborated by the officer prior to the investigatory stop. *J.L.*, 529 U.S. at 271 (fact that tipster's report of gun possession turned out to be true was immaterial; "The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.").

Thus, all that Officer Carpenter was able to corroborate prior to the stop was that Davis was in the overflow parking lot after school – hardly a remarkable prediction of a Springdale North High School student's activities that demonstrates "inside information."

Finally, the tip's reliability is heavily called into question in light of the source and means through with the tip was given – the high school's Anonymous Tip Hotline. The credibility of an informant is of utmost importance in weighing the reliability of a tip. A forum through which teenagers in a high school environment can accuse their peers of criminal activity with anonymity and without worry of even their voice being heard can hardly be said to produce credible informants. Even worse, in this case, the officer believed the informant was likely a student competing with Davis for the school's valedictorian, which the record reveals brings with it a college scholarship. However, the officer neglected to investigate that avenue and the possible informant's potential motive prior to the *Terry* stop of Davis.

The officer's independent investigation in this case did not transform the unreliable tip into reasonable suspicion. Sitting in a parked car for 10 minutes and acting nervous upon being approached and questioned by a law enforcement officer (especially as a teenager) are not, by themselves, suspicious or unusual, nor are they indicative of criminal behavior. And although the officer claimed to have seen Davis reach into his back seat, the officer could not tell what Davis had picked up, if anything, or otherwise what he was doing. Moreover, the officer neither saw nor smelled any smoke or other evidence of drug use. *See Jacoby*, 851 So. 2d at 916 (tip advised of people "smoking drugs"; "But the officer did not say that she saw or smelled smoke coming from the car. Thus, the officer's own observations during the consensual encounter cast doubt on the reliability of the tip."). Of course, because the tip did not identify the type of drugs, the officer did not even know what to look for or sense.

In sum, the anonymous tip in this case did not exhibit sufficient indicia of reliability to justify the investigatory stop of Davis. In *White*, the U.S. Supreme Court examined an anonymous tip with much more corroborated predictive information and other reliability than the one at issue here, and found it was "a close case." 496 U.S. at 332. I think the anonymous tip here is much closer on the reliability scale to the one at issue in *J.L.*, the other key Supreme Court case. 529 U.S. at 271 ("If *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side of the line.").

I would therefore reverse Davis' conviction and find the evidence of oxycodone should have been suppressed.

## II. Davis' Sentence is Cruel and Unusual Punishment

I would also find that Davis' sentence was imposed in violation of the Eighth Amendment, pursuant to the reasoning and principles set forth in *Miller* (which incorporates and expands upon those in *Graham* and *Roper*). Under that reasoning and those principles, a mandatory sentence of at least 25 years in prison imposed on a juvenile for drug possession – regardless of his age, youthful characteristics, or specifics of his crime – violates the Eighth Amendment's ban on cruel and unusual punishment.

*Roper* (prohibiting the death penalty for children) and *Graham* (prohibiting life-without-parole sentences for children in non-homicide cases) established "that children are constitutionally different than adults for purposes of sentencing." *Miller*, 132 S. Ct. 2464. *Miller* then took that established concept and intersected it with another established concept under Supreme Court precedent – *i.e.*, that individualized sentencing is warranted by the Eighth Amendment in situations where a trial judge or jury should consider the offender's specific circumstances and mitigating factors. That led the *Miller* Court to conclude that, when sentencing children, a sentencer must "follow a certain process – considering an offender's youth and attendant characteristics – before imposing a particular penalty." 132 S. Ct. at 2471.

The majority in this case takes a myopic view of *Miller*. Obviously the specific facts in *Miller* involved a sentence of life-without-parole for a juvenile who committed murder, not a lengthy term-of-years sentence for juvenile who possessed drugs. No one disputes that. But that does not mean the reasoning and principles set forth in *Miller* do not apply here.

*Miller*'s discussion of the "mitigating qualities of youth" (*id.* at 2467) and children's "lessened culpability" and "greater capacity for change" (*id.* at 2460) was not tied to or dependent upon a particular type of sentence. In explaining the reasoning of its prior cases distinguishing children from adults for sentencing purposes, *Miller* discussed that "children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Id.* at 2464 (quotations omitted). It discussed that "children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Id.* (quotations omitted). It discussed that "a child's character is not as well formed as an adult's [and] his traits are less fixed." *Id.*

These characteristics of youth are true regardless of whether a child is facing life-without-parole or a term-of-years sentence. As *Miller* itself recognized, "none of what [*Graham*] said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific." *Id.* at 2465. Children have unique mitigating qualities regardless of whether they murdered someone, possessed drugs, or shoplifted from a convenience store, and regardless of what possible sentences can be imposed from such crimes.

More importantly, *Miller* gives indications that the Eighth Amendment would require the mitigating qualities of youth to be considered when a child is facing any criminal sentence, not just a life-without-parole sentence.

First, the Court cited *Graham* in stating that "[a]n offender's age…is relevant to the Eighth Amendment, and so criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* at 2466 (quotations omitted). This expresses, or at the very least implies, that any mandatory minimum sentencing scheme that deprives a judge or jury from considering the mitigating qualities of youth is violative of the Eighth Amendment.

Second, when distinguishing *Harmelin v. Michigan*, 501 U.S. 957 (1991), which upheld a mandatory life-without-parole sentence against a drug offender and stated "a sentence which is not otherwise cruel and unusual does not become so simply because it is mandatory," the Court said:

> *Harmelin* had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders. We have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children. . . . [O]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults. So if (as *Harmelin* recognized) "death is different," children are different too. Indeed, it is the odd legal rule that does *not* have some form of exception for children.

*Miller*, 132 S. Ct. at 2470 (citations and quotations omitted; emphasis in original). Any mandatory minimum sentence for children *does* treat and view children "as miniature adults" and does not respect the fact that "children are different" for sentencing purposes.

Finally, Justice Roberts in his dissent expressly recognized that the majority's reasoning in *Miller* would logically prohibit all mandatory minimum sentences for children under the Eighth Amendment:

> This process [of expanding the scope of the Eighth Amendment] has no discernible endpoint – or at least none consistent with our Nations legal traditions. . . . After all, the Court tells us, "none of what [*Graham*] said about children . . . is crime-specific. *Ante*, at 2465. The principle behind today's decision seems to be only that because juveniles are different from adults, they must be sentenced differently. *See ante*, at 2467-2469. There is no clear reason that principle would not bar all mandatory sentences for juveniles, or any juvenile sentence as harsh as what a similarly situated adult would receive.

*Id.* at 2481-82. This statement regarding the effect of *Miller*'s reasoning was not refuted by the majority.

But we need not decide today whether *all* mandatory minimum sentences applied to children are unconstitutional. All we need to consider is whether a mandatory minimum sentence of 25 years in prison imposed upon a child for a drug offense is unconstitutional, in light of the reasoning and principles set forth in *Miller*. I would find that it is.

I recognize that *Miller* makes multiple references to the "harshest penalties" when discussing the importance of considering the mitigating qualities of youth. *E.g.*, 132 S. Ct. at 2468 ("*Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State's harshest penalties, a sentence or misses too much if he treats every child as an adult."). I do not read those references as an intent to limit the reasoning of *Miller* to life-without-parole sentences, particularly in light of the aspects of *Miller* I discuss above. Rather, I consider those references as nothing more than the Court acknowledging the specific situation before it.

I also believe the majority misses the mark when it finds *Miller* inapplicable because of the qualitative difference between a life-without-parole sentence and a term-of-years sentence. No one disputes there is a qualitative difference and, depending on the length of the term-of-years sentence, a drastic one. But the type of sentence is not the only factor at issue in evaluating a punishment under the Eighth Amendment. Underlying all Eighth Amendment analyses is the concept of proportionality between the sentence and the crime. *Miller*, 132 S. Ct. at 2463 ("the concept of proportionality is central to the Eighth Amendment"). So to focus solely on the fact that there is a qualitative difference between life-without-parole and 25 years in prison ignores half of the analysis. When one considers both the sentence and the crime, it becomes clear that *Miller*'s reasoning is equally applicable here.

Specifically, if considering the mitigating qualities of youth is important before sentencing a juvenile murderer to life in prison, then considering those same qualities is undoubtedly just as important before sentencing a juvenile to 25 years in prison for committing a non-violent drug offense involving nothing more than knowingly possessing a certain amount of drugs. If a child who murders someone is deserving of individualized sentencing so that his specific circumstances may be considered, then one who possesses drugs is just as deserving before he is stripped of over a quarter of his life due to imprisonment. Yes, life-without-parole for a child murderer involves a "forfeiture that is irrevocable," but 25 years in prison for a child involves reentering society in his 40s and being deprived of the years during which adulthood begins, higher education is typically achieved, and one's life direction takes shape. Before such a drastic punishment is inflicted upon a child for possessing drugs, I think the Eighth Amendment requires that the mitigating factors of youth be first considered.

Note that Davis is not asking us to hold that 25 years in prison for a drug offense is cruel and unusual punishment. That has already been addressed in *Benitez* and *Paey*.[1] Davis is not even asking for that ruling in the limited context of juveniles. All he is requesting is that we find the Eighth Amendment requires a sentencer to "follow a certain process – considering an offender's youth and attendant characteristics," *Miller*, 132 S. Ct. at 2471, before imposing a 25-year prison sentence against a child for a drug offense. Perhaps the trial judge in this case finds that 25 years is appropriate because of Davis' maturity and apparent stable background that fostered an environment where he was able to be a finalist for his school's valedictorian. Or perhaps the judge finds such a punishment is too severe in light of the particular circumstances of Davis' possession of oxycodone, which, according to Davis, was the result of him hiding pills from his mother, whom he believed was abusing her oxycodone prescription. Davis merely asks that the judge be given the opportunity to consider these circumstances and not be forced to automatically imprison him for the next 25 years. Under reasoning and principles set forth in *Miller*, I believe that opportunity is required.

[1] However, I note the impassioned dissent in *Paey* by Judge Seals and the various reasons he gives for why such a punishment should be deemed cruel and unusual. 943 So. 2d at 928-38.

## III. Conclusion

For the foregoing reasons, I believe the trial court erred in denying Davis' motion to suppress the evidence of oxycodone possession. I also believe Davis' sentence of 25 years in prison, which was imposed mandatorily under section 893.135(1)(c), Florida Statutes, constitutes cruel and unusual punishment. I would reverse Davis' conviction and sentence.

I respectfully dissent.

# Supreme Court of Florida

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No. SC14-0001

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**JESSE DAVIS**,
Petitioner,

vs.

**STATE OF FLORIDA**,
Respondent.

**ORDER INVOKING DISCRETIONARY JURISDICTION**

On consideration of Petitioner's Notice to Invoke Discretionary Appellate Jurisdiction, the above-styled case is hereby acknowledged. Upon direction of the Justices of the Court, it is hereby ordered that the following issues be briefed and argued to the Court by the parties:

1. Whether the investigatory stop conducted by the Springdale Police Department, which led to the drug evidence against Petitioner, violated Petitioner's rights under the Fourth Amendment to the United States Constitution.

2. Whether the sentence imposed on Petitioner under section 893.135(1)(c), Florida Statutes, constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution, because the imposition of the sentence was mandatory.

Dated: January 3rd, 2014.

*Sarah Rojas*

Sarah Rojas
Clerk, Supreme Court