

SUPREME COURT OF FLORIDA

Calhoun v. State

138 So. 3d 349 (Fla. 2013) · Decided October 31, 2013

SUMMARY

The Florida Supreme Court reviewed Johnny Mack Sketo Calhoun’s convictions for first-degree murder and kidnapping and his death sentence. The court held that any error concerning exclusion of portions of Calhoun’s police interview under the rule of completeness was harmless, struck the avoiding-arrest aggravator for lack of competent substantial evidence, and concluded that the error was harmless in light of the remaining aggravators and mitigation. The court affirmed the convictions and sentences.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Per curiam; Pariente; Quince; Labarga; Perry; Polston; Canady; Lewis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | October 31, 2013                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Direct appeal from convictions for first-degree murder and kidnapping and sentences of death and 100 years' imprisonment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| STANDARD OF REVIEW    | Evidentiary rulings under the rule of completeness are reviewed for abuse of discretion, subject to preservation requirements and harmless-error review. Aggravating-circumstance findings are reviewed to determine whether the trial court applied the correct rule of law and whether competent substantial evidence supports the findings. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could find the elements beyond a reasonable doubt; circumstantial-evidence convictions must be supported by evidence inconsistent with any reasonable hypothesis of innocence. Death sentences receive independent proportionality review. |
| PRECEDENTIAL VALUE    | Published Florida Supreme Court opinion; binding precedent in Florida subject to later treatment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PARTIES               | Johnny Mack Sketo Calhoun v. State of Florida                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

## TOPICS

criminal procedure   sentencing   evidence   appellate procedure   harmless error

## PRACTICE AREAS

criminal law   capital punishment   criminal procedure   appellate law   evidence

## QUESTIONS PRESENTED

1. Whether the trial court violated the rule of completeness by admitting portions of Calhoun's interview while excluding allegedly exculpatory portions.
2. Whether the trial court properly found the avoiding-arrest aggravator.
3. Whether competent substantial evidence supported the cold, calculated, and premeditated aggravator.
4. Whether Florida's death-penalty scheme violated *Ring v. Arizona*.
5. Whether the evidence was sufficient to support the convictions for first-degree murder and kidnapping.
6. Whether the death sentence was proportionate.

## HOLDINGS

1. The claim was not preserved because Calhoun failed to proffer the specific excluded statements. In any event, although the trial court erred by excluding the statements solely because they were self-serving without conducting the required fairness analysis, the error was harmless beyond a reasonable doubt.
2. The trial court erred in finding the avoiding-arrest aggravator because competent substantial evidence did not establish that avoiding arrest was Calhoun's sole or dominant motive for killing Brown. The error was harmless beyond a reasonable doubt, so the death sentence was not disturbed.
3. Competent substantial evidence supported the trial court's finding of the cold, calculated, and premeditated aggravator.
4. Florida's death-penalty statute did not entitle Calhoun to relief under *Ring v. Arizona*, and the court declined to revisit its prior decisions rejecting comparable constitutional challenges.
5. The evidence was sufficient to support both premeditated first-degree murder and felony murder based on kidnapping, as well as the kidnapping conviction.
6. The death sentence was proportionate in light of the totality of the circumstances, including the CCP and kidnapping aggravators and the limited mitigation.

## KEY QUOTATIONS

*"The trial court erred in excluding Calhoun's statements for the reason that they were self-serving without making a determination based on fairness."* (361)

*"The trial court's finding of the avoiding arrest aggravator is not supported by competent, substantial evidence in this case."* (362)

*“Based on the above, there is competent, substantial evidence to support the trial court’s finding of CCP.”*  
(365)

*“The death sentence is proportional in this case.”* (368)

## FACTUAL BACKGROUND

Brown disappeared after telling witnesses that she would pick up Calhoun at his trailer on December 16, 2010. Her remains were later found bound and burned in the trunk of her Toyota in Alabama; medical evidence established that she died from smoke inhalation and thermal burns while the car was burning. Evidence connected Brown to Calhoun's trailer, including her blood and hair, and witnesses saw Calhoun shortly afterward with scratches, blood, and a white four-door car. Calhoun was later found hiding in his trailer.

## PROCEDURAL HISTORY

A jury found Calhoun guilty of first-degree murder and kidnapping and recommended a death sentence by a vote of nine to three. The trial court found aggravating and mitigating circumstances, sentenced Calhoun to death for murder and 100 years for kidnapping, and Calhoun appealed directly to the Supreme Court of Florida.

## DISPOSITION

affirmed

## CASES CITED

- Larzelere v. State, 676 So. 2d 394, 401-02 (Fla. 1996)
- Kaczmar v. State, 104 So. 3d 990, 1000-01 (Fla. 2012)
- Blackwood v. State, 777 So. 2d 399, 410-11 (Fla. 2000)
- Lucas v. State, 568 So. 2d 18, 22 (Fla. 1990)
- Jacobs v. Wainwright, 450 So. 2d 200, 201 (Fla. 1984)
- Anderson v. State, 841 So. 2d 390, 403, 407-08 (Fla. 2003)
- Christopher v. State, 583 So. 2d 642, 646 (Fla. 1991)
- State v. DiGuilio, 491 So. 2d 1129, 1138 (Fla. 1986)
- McWatters v. State, 36 So. 3d 613, 641 (Fla. 2010)
- Lynch v. State, 841 So. 2d 362, 368, 373 (Fla. 2003)
- Jennings v. State, 718 So. 2d 144, 151 (Fla. 1998)
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- Buzia v. State, 926 So. 2d 1203, 1209-10 (Fla. 2006)
- Parker v. State, 873 So. 2d 270, 289 (Fla. 2004)
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- Franklin v. State, 965 So. 2d 79, 98-99 (Fla. 2007)
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- Wuornos v. State, 644 So. 2d 1000, 1008 (Fla. 1994)
- Hertz v. State, 803 So. 2d 629, 651 (Fla. 2001)
- Walls v. State, 641 So. 2d 381, 388 (Fla. 1994)
- Gordon v. State, 704 So. 2d 107, 114 (Fla. 1997)
- Oyola v. State, 99 So. 3d 431, 443 (Fla. 2012)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- Ault v. State, 53 So. 3d 175, 206 (Fla. 2010)
- Jones v. State, 845 So. 2d 55, 74 (Fla. 2003)
- Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002)
- King v. Moore, 831 So. 2d 143 (Fla. 2002)
- Salazar v. State, 991 So. 2d 364, 378 (Fla. 2008)
- Johnson v. State, 969 So. 2d 938, 961 (Fla. 2007)
- Miller v. State, 42 So. 3d 204, 227 (Fla. 2010)
- Jones v. State, 963 So. 2d 180, 184 (Fla. 2007)
- Bradley v. State, 787 So. 2d 732, 738 (Fla. 2001)
- McDuffie v. State, 970 So. 2d 312, 330 (Fla. 2007)
- Darling v. State, 808 So. 2d 145, 155 (Fla. 2002)
- Reynolds v. State, 934 So. 2d 1128, 1145-46 (Fla. 2006)
- Orme v. State, 677 So. 2d 258, 262 (Fla. 1996)
- Dessaure v. State, 891 So. 2d 455, 472 (Fla. 2004)
- Evans v. State, 838 So. 2d 1090, 1095 (Fla. 2002)
- Woods v. State, 733 So. 2d 980, 985 (Fla. 1999)
- Norton v. State, 709 So. 2d 87, 92 (Fla. 1997)
- Kocaker v. State, 119 So. 3d 1214, 1226 (Fla. 2013)
- Floyd v. State, 913 So. 2d 564, 578 (Fla. 2005)
- Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991)

- Porter v. State, 564 So. 2d 1060, 1064 (Fla. 1990)
- Offord v. State, 959 So. 2d 187, 191 (Fla. 2007)
- Hayes v. State, 581 So. 2d 121, 127 (Fla. 1991)
- Sliney v. State, 699 So. 2d 662, 671-72 (Fla. 1997)
- Spencer v. State, 615 So. 2d 688 (Fla. 1993)

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