Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Maitre, 17-12166 (Aug. 7, 2018)

Maitre appealed convictions and sentences for offenses related to access device fraud and identity theft. The Eleventh Circuit affirmed.

Maitre argued that the trial court erred in giving the "deliberate ignorance instruction." "The instruction is appropriate where there are facts supporting the 'inference that the defendant was aware of a high probability of the existence of the fact in question and purposely contrived to avoid learning all of the facts in order to have a defense in the event of a subsequent prosecution.' . . . It is error to give the instruction when there is evidence of only actual knowledge, but not when the evidence could support both actual knowledge or deliberate ignorance and the jury was instructed on both."

Although Maitre argued that "no facts supported an inference that she purposely contrived to avoid learning all of the facts beyond her own denial of knowledge," the Court concluded to the contrary. A key witness testified that Maitre "knew he didn't have a job and yet she accepted 15 to 20 purses from him as gifts without asking more." Maitre "told police during the first search that Mr. Smith gave her purses with other people's wallets and IDs in them, but did not seem concerned about how or why those belongings came to be inside the purses." Other relevant evidence was found in plain view throughout Maitre's house.

The Court further found that evidence to support involvement in a conspiracy was sufficient. The case entailed more "than just the sheer volume of stolen goods found in the house." Maitre "engaged in 'heat runs' to avoid being followed after . . . she learned the police were investigating her in connection with the car burglaries." She drove two others "to throw away evidence from burglaries in a car containing, in plain view, a stolen phone and devices used to break into cars."

As to aggravated identity theft, Maitre argued "the government did not present sufficient evidence demonstrating her possession of the stolen identifications or her knowledge that the identifications belonged to real people." There was sufficient

evidence that she constructively possessed the means of identification at issue, and that she knew the identifications belonged to real people. As to the "real people" component, Maitre's involvement in the conspiracy had demonstrated her awareness of the car burglaries. From this, it was also reasonable to infer "that she knew the means of identification taken from these purses belonged to real people."

Maitre also challenged the failure of the district court to apply the "minor-role reduction under Guideline s. 3B1.2," because she was "'merely a passive observer to the conduct' and her involvement was 'substantially less material than the other defendants." The same evidence noted above was relied upon by the Court to support the district court's finding that Maitre was a "'full, equal participant with Mr. Smith.'"

United States v. Elbeblawy, 16-16048 (Aug. 7, 2018)

Elbeblawy entered a guilty plea to charges related to Medicare fraud. His written plea agreement "waived two evidentiary rules that would ordinarily bar the admission of statements made during plea discussions." He subsequently withdrew from the plea, proceeded to trial, and objected to the admission of "the factual basis for the plea agreement as well as other evidence that the government obtained as a result of Elbeblawy's cooperation." On appeal, the Eleventh Circuit found that this evidence was properly admitted.

As a general rule, statements made during plea negotiations are not admissible in either a criminal or civil case. The defendant, in this case, argued that the waiver in his plea agreement, in which he waived the rules pertaining to admissibility of such statements, was unenforceable. His argument was that the waiver was ambiguous, or, that he did not knowingly and voluntarily sign the plea agreement which contained the waiver. The Eleventh Circuit disagreed.

The waiver was clear, as the agreement stated that the defendant waived "any protections afforded by . . . Rule 11 . . . and Rule 410," the rules that set forth the general inadmissibility of statements made during plea negotiations. The Court's opinion quotes other provisions of the agreement which bolster its conclusion.

The defendant further argued that the waiver was involuntary because he did not understand it. He argued that his attorney discussed the plea agreement with him but did not explain the evidentiary rules regarding the admissibility of statements made during plea negotiations. In this case, the district court heard extensive testimony regarding the voluntariness of the waiver. Defense counsel went through

each paragraph separately with the defendant. The defendant was well educated and asked many questions, thus reflecting that he "took steps to ensure that he knew his rights and understood the consequences of signing the agreement." The defendant did not indicate any concerns or questions regarding this aspect of the plea agreement.

The defendant argued that the government committed a Brady violation "when it failed to disclose an allegedly exculpatory report about an early police interview" of a witness. In this initial interview, the witness had made exculpatory denials. Subsequent video evidence and the same witness's testimony "established that his initial exculpatory denials were false," and the interview report at issue did not create a reasonable probability of a different outcome at trial. That was even more so in light of what the Court described as overwhelming evidence even without that witness's testimony.

One count of the indictment alleged that the defendant conspired to defraud the United States in any manner or for any purpose. The district court instructed the jury, in part, that the jury could convict the defendant for conspiring to cheat the government out of property or money. The defendant argued that this constituted an improper constructive amendment of the indictment. The Eleventh Circuit disagreed. This argument was not preserved and was reviewed for plain error. The Court found no error at all. The wording of the jury instruction differed slightly from that in the indictment, and the instructions otherwise tracked the pattern instructions almost verbatim.

The defendant argued that the district court erred in sentencing him pursuant to the 2015 Guidelines, which were harsher than the 2011 guidelines. The guidelines in effect at the time of sentencing are generally applicable. However, an ex post facto violation results from "sentencing an offender under a version of the Guidelines that would provide a higher sentencing range than the version in place at the time of the offense." In this case the defendant could be sentenced under the 2015 Guidelines "only if his offense conduct continued after the amendment." The evidence satisfied that requirement, and there was no error.

Wilson v. Warden, 14-10681 (Aug. 10, 2018)

This is a federal habeas corpus case reviewing a state-court decision in which the sentence of death was at issue. The case was before the Eleventh Circuit on remand from the Supreme Court of the United States, in light of the recent decision in Wilson v. Sellers, 138 S.Ct. 1188 (2018), in which the Supreme Court held that

federal habeas courts reviewing state court decisions "must 'look through' an unexplained decision of the state supreme court to the last reasoned decision and presume that the state supreme court adopted the reasoning in the decision by the lower court." Applying that standard, the Eleventh Circuit then upheld the state court's denial of claims of ineffective assistance of counsel.

First District Court of Appeal

McBride v. State, 1D17-2825 (Aug. 7, 2018)

The First District reversed the trial court's order denying a motion for post-conviction relief based on ineffective assistance of counsel and ordered a new trial.

The defendant was convicted of sexual battery on a child. A pivotal issue at trial was whether the victim skipped school. The court held an evidentiary hearing on the claim of ineffective assistance of counsel. Counsel testified that "he believed he had sufficient evidence with which to impeach the victim's credibility." The victim claimed that he skipped school on the day in question. Trial counsel testified "that he unsuccessfully sought to contact the victim's teacher." Had "trial counsel obtained the victim's school records, the victim's claim that he skipped school following the abuse could have been discredited rather than it simply being implied during the defense's closing argument that the victim's claim was unreasonable and fabricated."

Wilson v. State, 1D17-4628 (Aug. 7, 2018)

The First District cited its prior decision of Romero v. State, 105 So. 3d 550 (Fla. 1st DCA 2012), for the holding that Graham v. Florida, 560 U.S. 48 (2010), does not apply to offenders 18 years of age or older.

Hutchinson v. State, 1D17-4787 (Aug. 7, 2018)

A habeas corpus petition challenging a conviction from Hillsborough County was filed in Calhoun County, where the petitioner was in custody. The court in Calhoun County dismissed the petition. The correct remedy was to transfer the petition to Hillsborough County for that court to treat it as a Rule 3.850 motion.

Wilhelm v. State, 1D16-2262, 1D17-0571 (Aug. 10, 2018) (on rehearing)

The First District affirmed the trial court's denial of a Rule 3.850 motion which alleged several claims of ineffective assistance of counsel – failing to convey a plea offer, failing to give good advice as to the offer, and miscalculating the defendant's age for the purpose of sentencing as a youthful offender. The trial court held an evidentiary hearing.

As to the conveyance of the plea offer, the defendant and attorneys gave contradictory testimony at the evidentiary hearing regarding the 10-year offer. The attorneys told the defendant he could receive a sentence of more than 20 years, but the defendant would not accept a plea offer of more than two or three years of incarceration. The attorneys told him that such an offer was unlikely.

The attorneys further testified that the defendant did not correctly account for his age and that the statutory window "to seek the mitigated sentence expired just a few months after the charges were filed when Mr. Wilhelm turned 21." "The attorneys admitted miscalculating Mr. Wilhelm's age, but testified that the overarching defense strategy was to delay sentencing to give the victim's family time to heal, hoping that they would not oppose a mitigated sentence."

Jackson v. State, 1D17-316 (Aug. 10, 2018)

The First District reversed a conviction for aggravated battery and remanded for a new trial because the trial court erred by not giving a jury instruction on the justifiable use of deadly force.

As long as there is any evidence to support a theory of defense, no matter how weak, a defense-requested instruction on the theory of defense must be given. The facts in the instant case warranted the instruction because the jury "could have viewed the combined evidence 'as reasonably suggestive of a threat [of imminent death or great bodily harm] to a person in appellant's position.'" Jackson shot and wounded the victim in an altercation at a nightclub. The two had "exchanged words," according to the victim. Jackson testified "that the victim escalated the fight when he cornered Mr. Jackson against a wall and began punching him on both sides of the face. He claimed that one of the punches left him with nerve damage to his eye. More than that, he feared the victim's punches could break his medially vulnerable neck and shoulder. He showed a scar at trial from a cervical surgery, and the jury viewed a video of his interrogation in which Mr. Jackson claimed to have

had multiple prior neck and shoulder surgeries and expected additional surgery. Mr. Jackson testified that the victim punching him was a big guy."

Sorey v. State, 1D17-901 (Aug. 10, 2018)

On direct appeal from convictions and sentences for possession with intent to sell a controlled substance within 1,000 feet of a place of worship and possession of drug paraphernalia, Sorey argued that it trial counsel was ineffective on the face of the record for failing to move for judgment of acquittal on the controlled substance charge. Trial counsel, in the motion for judgment of acquittal, failed to argue that the State failed to prove the offense occurred within 1,000 feet.

The First District held that this was not one of the rare instances where a claim of ineffective assistance of counsel could be raised on direct appeal and that the trial court was the more appropriate forum to determine "why actions were taken or omitted by counsel."

Scott v. State, 1D17-4089 (Aug. 10, 2018)

The trial court's order modifying probation was reversed because the trial court found a willful and substantial violation based on a condition of probation that had not been imposed by the trial court. While the sentencing hearing included a discussion regarding employment at Home Depot, "the actual condition of probation imposed by the court was that Scott obtain a full-time job or show good faith efforts to do so." Thus, the failure to obtain employment at Home Depot did not constitute a violation of the actual condition of probation.

Second District Court of Appeal

D.D. v. State, 2D17-769 (Aug. 10, 2018) (on rehearing)

The State failed to present sufficient evidence of the requisite value of stolen and damaged property in its prosecution of charges of grand theft and criminal mischief.

For grand theft, the State had to prove value in excess of $300. Here, the "victim was only barely able to identify the phone, and he had no knowledge at all of any characteristics that would be relevant to market value." Although testimony regarding internet research was presented, "nothing in the testimony established that

the phone or phones they saw on the internet were the same kind of phone or in a similar condition to the phone the victim had."

The charge of criminal mischief required proof of value in excess of $200. D.D. did not preserve this issue at trial and it was not preserved for appellate review. The Second District, however, did find that trial counsel's failure to move for judgment of acquittal as to value constituted ineffective assistance on the face of the record. For the same reasons that the proof was insufficient as to grand theft, it was insufficient as to the charge of criminal mischief.

The Second District reversed and remanded with directions to enter an order finding that D.D. committed lesser degree offenses of the two for which the proof of value was insufficient.

Third District Court of Appeal

State v. Jene-Charles, 3D16-332 (Aug. 8, 2018)

The trial court erred in withholding adjudication. The trial court accepted a guilty plea on all counts and withheld adjudication and imposed a term of imprisonment with credit for all time previously served followed by probation. Pursuant to section 948.01(2), Florida Statutes, and Rule 3.670, Florida Rules of Criminal Procedure, a court has discretion to withhold adjudication when a defendant is placed on probation, even if the court sentences the defendant to time served prior to the plea. The court may also withhold adjudication, place a defendant on probation and impose incarceration as a special condition of probation if the period of incarceration is less than one year. On remand, "the court may withhold adjudication, place Jene-Charles on probation, a special condition of which will be credit for time already served. . . ."

The Court rejected the defendant's argument on cross-appeal that the conviction for one count constituted double jeopardy because the defendant pled open to the trial court to two counts of resisting an officer without violence. The argument was not preserved in the trial court and the record was unclear as to whether the two offenses were "one continuous series of events or two separate acts." The affirmance as to this was without prejudice to raise the issue in a Rule 3.850 motion.

Fourth District Court of Appeal

Hight v. State, 4D16-4261 (Aug. 8, 2018)

Hight was charged with second-degree murder. Prior to trial, a motion to dismiss under the Stand Your Ground law was denied, pursuant to an evidentiary hearing. At trial, Hight was convicted of manslaughter, as a lesser included offense and the conviction was appealed in 2016. In 2017, the legislature amended the Stand Your Ground law and changed the burden of proof, imposing it on the State. In this appeal, the Fourth District found that the statutory amendment was a substantive change to the law, and applied prospectively from the date of enactment. As a result, Hight was not entitled to the benefit of the statutory amendment.

The Second District agreed with the Third District on this issue (Love v. State, 43 Fla. L. Weekly D1065 (Fla. 3d DCA May 11, 2018), review granted, SC18-747), and certified conflict with decisions of the First and Second Districts (Commander v. State, 43 Fla. L. Weekly D1554 (Fla. 1st DCA July 9, 2018); Martin v. State, 43 Fla.L.Weekly D1016 (Fla. 2d DCA May 4, 2018).

McDonald v. State, 4D18-1412 (Aug. 8, 2018)

As the Court previously did in its en banc decision in Hart v. State, 43 Fla.L. Weekly D970a, 2018 WL 2049668 (Fla. 4th DCA May 2, 2018), it certified conflict with several decisions of the Second District.

In Hart, the Fourth District had held that a 30-year prison term for a juvenile offender for a non-homicide offense did not constitute an unlawful sentence under Florida v. Graham, 560 U.S. 48 (2010), and did not require resentencing under the 2014 juvenile sentencing statutes.

Fifth District Court of Appeal

Pluck v. State, 5D18-1742 (Aug. 10, 2018)

The Fifth District affirmed the summary denial of a Rule 3.850 motion in which the defendant alleged that his plea was involuntary due to ineffective assistance of counsel with respect to advice regarding the consequence of deportation. The record attached to the trial court's order conclusively refuted the claim.

Trial counsel had stated on the record that the defendant's case had been continued several times to allow him to consult with an immigration attorney. The defendant testified under oath at the plea colloquy that he understood that his plea could have deportation consequences and that he still thought it was in his best interest to enter the plea, even after having consulted with separate immigration counsel.