Case Law Update
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Prepared by
Richard L. Polin

Supreme Court of Florida

In Re: Amendments to the Florida Rules of Juvenile Procedure, SC18-174 (Dec. 6, 2018)

The Court approved for publication and use several amendments to the Rules of Juvenile Procedure.

Rule 8.080(c)(10) addresses what the court must advise the juvenile as to the consequences of possible deportation during a plea colloquy. The language in that rule has been significantly revised.

A sentence was added to Rule 8.045(g), to "prohibit the court from issuing a custody order based on a child's failing to appear unless there is evidence that the child willfully failed to appear."

Rule 8.060 (discovery) was amended "to include informant witnesses who will offer testimony concerning statements of a child charged with a delinquent act as a Category A witness." The witness information that the child must provide the State as its part of discovery has been amended to include the addresses of all persons the child intends to call as witnesses on the witness list.

The language in Rule 8.100 has been amended as to the use of restraints on a child during a hearing.

Foster v. State, SC18-860 (Dec. 6, 2018)

Foster appealed the denial of a Rule 3.851 motion. Although the Supreme Court, based on prior decisions, held that Hurst did not apply retroactively to the death sentence, the Court went on to address Foster's related claim that he "was not convicted of all of the elements of 'capital first-degree murder.'"

First, the Court observed that there is no crime of "capital first-degree murder." The crime is first-degree murder, and the jury must convict the defendant of that offense unanimously before consideration of the sentence of death. It "is not

the *Hurst* findings that establish first-degree murder as a capital crime for which the death penalty may be imposed. Rather, in Florida, first-degree murder is, by its very definition, a capital felony." Thus, the *Hurst* "penalty-phase findings are not elements of the *capital* felony of first-degree murder. Rather, they are findings required of a jury: (1) *before* the court can impose the death penalty for first-degree murder, and (2) *only after* a conviction or adjudication of guilt for first-degree murder has occurred." "There is no . . . greater offense of 'capital first-degree murder.'"

Foster was 18 years old at the time of the commission of the murder and argued that the Court should expand the United State's Supreme Court's decision in Roper v. Simmons, 543 U.S. 551 (2005), to extend to him on the basis of new scientific evidence "that young adults are developmentally akin to juveniles." This was presented as a claim of newly discovered evidence, and it was rejected on the basis of the Supreme Court's prior decision in Branch v. State, 236 So. 3d 981 (Fla. 2018).

Eleventh Circuit Court of Appeals

United States v. Barton, 17-10559 (Dec. 6, 2018)

Barton appealed his conviction for being a felon in possession of a firearm. The only issue on appeal was whether the district court abused its discretion under Daubert in admitting expert testimony concerning the DNA testimony. The Eleventh Circuit found no abuse of discretion and affirmed. The DNA evidence analyzed the firearm and resulted in the opinion that the DNA profile on the firearm would match with only 1 out of 41 million people in the general population. A defense expert disagreed.

The element of Daubert that was at issue was whether the methodology was sufficiently reliable. The reliability of the basic methodology for PCR/STR testing was not in dispute. Rather, Barton argued "that the use of this testing with the low quantity of a complex DNA mixture present in this case, and in the absence of appropriate validation testing and interpretive thresholds for complex mixtures, rendered the data unreliable."

The Eleventh Circuit concluded that based on the competing testimony of the experts at the Daubert hearing, this was basically a credibility issue, and credibility issues are beyond the scope of the court's gatekeeping function. On appeal, Barton presented additional evidence, including recent scientific journal articles and the

updated 2017 SWGDAM guidelines. The Eleventh Circuit would not entertain new evidence that was neither considered by the trial court nor explained by the DNA experts below.

First District Court of Appeal

State v. Williams, 1D17-1581 (Dec. 5, 2018) (on motion for rehearing or clarification)

The Court denied the State's motion for rehearing, granted clarification, withdrew its prior opinion and issued a revised opinion.

Williams was sentenced to three years of probation in 1987. In 1991, three days prior to the end of the probationary term, an affidavit of violation was filed for failure to pay costs. A warrant was issued but there was no arrest. In 2015, Williams was arrested on a criminal charge in Georgia, and the State filed an amended affidavit, adding that charge.

In Mobley v. State, 197 So. 3d 572 (Fla. 4th DCA 2016), the Court held that a warrant can not toll probation for technical violations. In this case, in the trial court, the State asked the court to recede from Mobley because it did not interpret sections 901.02 and 948.06(1), Florida Statutes, correctly. On appeal, the State argued that Mobley did not apply because it did not exist when Williams violated his probation. That argument was not preserved for appellate review as it was not argued below.

Additionally, the State argued that it was a jurisdictional issue and could be raised for the first time on appeal. The First District disagreed. The lack of subject matter jurisdiction may be raised for the first time on appeal. This was not an issue of subject matter jurisdiction.

Third District Court of Appeal

Rodriguez v. State, 3D15-2339 (Dec. 4, 2018)

On remand from the Florida Supreme Court, the Third District reconsidered this case in light of the Florida Supreme Court's opinion, directing the Third District to apply "the harmless standard of State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986), rather than the harmless error standard of section 59.041, Florida Statutes."

The Third District reevaluated the facts, quoting the relevant language from DiGiuilio, and concluded that the State failed to meet the harmless error burden.

Rodriguez appealed a burglary conviction. Many of the facts of the case were "hotly contested." A neighbor of the premises did not testify at trial, and, over objection, that witness's out-of-court statements were admitted into evidence. Rodriguez, at the request of a pregnant woman, Ms. Negron, went to neighbors of Negron to complain about loud noise and harassment. During that confrontation, the door was knocked down, Rodriguez entered, a fight ensued, and a handgun was discharged. Those facts were not in dispute. The neighbors testified that Rodriguez knocked down the door, entered, pointed a gun, beat them and discharged the gun during the melee. Rodriguez testified that he politely requested that they leave Negron alone, heard them threaten Negron, accidentally knocked down part of the door, was "yanked into the apartment as he was turning away to leave, was attacked, and that a friend of the neighbors in the apartment possessed the gun and discharged it as part of a confused scuffle."

The hearsay "consisted of (1) one neighbor's statement that, on the day before the incident, Negron threatened to send someone to 'whoop his a**' or 'f*** him up'; and (2) a witness's statement that he heard Negron tell one neighbor on the day before the incident, 'I'm going to get somebody to put a cap in [your] a**.'" Negron did not testify at trial.

The Third District rejected the State's argument that the above statements qualified as an exception to the hearsay prohibition based on the state of mind exception. That exception would apply only to the declarant's state of mind; not Rodriguez's. The Court further rejected the argument that Negron's state of mind was relevant. She was not the victim of the case, it did not relate to an element of the offense, it did not relate to a claim of self-defense by the defendant or suicide or accidental death, and it did not relate to the rebuttal of a defense.

While the Court had doubts as to whether the statement about putting a cap in one of the neighbor's backsides, by itself, was harmless, where the jury found that Rodriguez did not possess a firearm, the other statement could not be deemed harmless, as there was a reasonable possibility "that Negron's hearsay statements were projected by the jury onto Rodriguez and used to conclude Rodriguez had the 'intent to commit an assault inside [the neighbor's] apartment' which is exactly what the State argued in closing."

Fourth District Court of Appeal

Hinck v. State, 4d17-2198 (Dec. 5, 2018)

The Fourth District reversed a conviction for attempted second-degree murder. The trial court erred in sustaining "the state's hearsay objection to the testimony of a witness who heard the defendant's alleged excited utterance less than a minute after the altercation, which testimony corroborated the defendant's recitation of the alleged excited utterance and supported his self-defense claim."

The altercation resulted in the defendant stabbing the alleged victim multiple times. A witness, a hotel employee who was at the front desk, would have testified that she observed the defendant, "bloody everywhere," "shaking," "scared," "he was like muttering like trying to get the words out." The defendant was saying that he had been attacked and stabbed someone, and that it was on the third floor. These statements were not in response to any questions that the hotel employee had posed. It was established that this was less than one minute after the altercation.

The trial court had excluded it, notwithstanding the exception for spontaneous statements, because it was self-serving and exculpatory. The Fourth District rejected the trial court's rationale. The Fourth District cited its own earlier decision to the effect that being self-serving, in and of itself, was not a sufficient basis for excluding evidence. The Court further distinguished all of the cases upon which the trial court had relied.

The Court then went through the elements of an excited utterance and found them satisfied. The "stabbing was an event startling enough to cause nervous excitement." "Second, sufficient evidence existed to sow that the defendant made his statement to the hotel employee before there was time to contrive or misrepresent." "Third, the hotel employee described the defendant as a person still under the stress or excitement caused by the event."

Case law upon which the State relied conflated analysis of spontaneous statements with that of excited utterances, and there is a significant difference between the two. For a spontaneous statement, the statement is not admissible "when such statement is made under circumstances that indicate its lack of trustworthiness." That element is not a factor for excited utterances.

Roberts v. State, 4D17-3877 (Dec. 5, 2018)

The defendant was charged with attempted first-degree murder and convicted of the lesser offense of attempted second-degree murder. The State conceded that the failure to instruct on attempted manslaughter, which was one step removed from the convicted offense, constituted fundamental error. There was no express waiver on the part of the defense.

State v. Wright, 4D18-856 (Dec. 5, 2018)

The State appealed on order resentencing a juvenile. The trial court had held that the imposition of a mandatory minimum sentence for discharging a firearm would be "contrary to individualized consideration required by U.S. Supreme Court cases." The Fourth District previously rejected that argument in Martinez v. State, 43 Fla. L. Weekly D2280 (Fla. 4th DCA Oct. 10, 2018). The defendant argued that section 921.1401, Florida Statutes, superseded section 775.087. The Fourth District disagreed, and aligned itself with the Fifth District's analysis of the issue in Montgomery v. State, 230 So. 3 1256 (Fla. 5th DCA 2017).