Case Law Update
February 18, 2019
Prepared by
Richard L. Polin

Eleventh Circuit Court of Appeals

Pitch v. United States, 17-15016 (Feb. 11, 2019)

Seventy years after a high-profile lynching of two African-American couples in Walton County, Georgia, for which offenses no one was ever charged, an author and historian petitioned the federal district court for the unsealing of the grand jury transcripts. The court granted the request and the government appealed, alleging an abuse of discretion. The Eleventh Circuit affirmed.

The disclosure was not based on the limited authority that exists under Rule 6(e), Federal Rules of Criminal Procedure, but on the inherent authority of the court. That inherent authority must be based on "exceptional circumstances." Such circumstances exists "when the need for disclosure outweighs the public interest in continued secrecy." "[G]rand jury records on a matter of exceptional historical significance may trigger a district court's inherent authority to disclose them."

The Court looked at multiple factors, including the importance of the incident and the passage of time.

United States v. Valois, 17-13535 (Feb. 12, 2019)

Valois and two codefendants appealed convictions and sentences for trafficking in cocaine in international waters, in violation of the Maritime Drug Law Enforcement Act, 46 U.S.C. ss. 70501-70508.

Based on the Court's own prior decisions, the Court rejected multiple arguments that the MDLEA's exercise of extraterritorial jurisdiction was unconstitutional. See United States v. Campbell, 743 F. 3d 802 (11th Cir. 2014); United States v. Cruickshank, 837 F. 3d 1182 (11th Cir. 2016); United States v. Rendon, 354 F. 3d 1320 (11th Cir. 2003); United States v. Tinoco, 304 F. 3d 1088 (11th Cir. 2002).

The district court did not err in denying a motion for mistrial based on the prosecutor's reference, in closing argument, to a prior seizure that had occurred 36

hours earlier. One of the three codefendants had brought this prior seizure up in cross-examination in an effort to show that the Coast Guard "mistakenly attributed the cocaine from the first seizure to the defendants in this case." The prosecutor, in closing argument, referenced the prior seizure "and suggested that both go-fast vessels were a part of a 'concerted effort' that was 'being directed by whoever was orchestrating these deliveries to Central America." It was further asserted that the defendants' vessel "followed the exact same procedures as that first boat had done," referring to eluding the Coast Guard, jettisoning cargo and scuttling the vessel. As the prosecutor was commenting on evidence introduced by one of the three codefendants, this was not evidence or a comment about a "bad act" under Rule 404(b).

Two groups of three defendants were prosecuted independently, and a total of three attorneys were appointed, each representing one defendant from each group. The court rejected the argument that this violated the right to conflict-free counsel as counsel was prevented from "attempting to shift blame to the other group of defendants arrested overnight on November 23 to24 for the cocaine found in the water on November 25."

At the time of the appointment of counsel for the two groups, there were two indictments based on different seizures on different days. The issue of a potential conflict did not arise until one of the three codefendants in this case used cross-examination in an effort to link the two cases. Thus, there was no violation of prior case law by failing to hold a hearing regarding any conflict prior to trial. Such a hearing was held prior to sentencing.

Safety valve provisions of the sentencing guidelines apply to five specified statutes, and, when the safety valve applies, "the district court may impose a sentence without regard to the statutory minimum sentences that would otherwise limit the court's discretion." The Court rejected arguments based on the equal protection clause and the Fifth Amendment that the denial of the safety valve benefits to Title 46 defendants resulted in the unconstitutionality of the safety-valve provisions.

The Court also addressed and rejected the argument of one codefendant that the district court erred in denying him a minor-role reduction under the Guidelines. Looking at the totality of the circumstances, the Court found that the "record shows that all three defendants knowingly participated in the illegal transportation of a large quantity of cocaine, they were important to that scheme, and they were held responsible only for that conduct."

United States v. Caniff, 17-12410 (Feb. 15, 2019)

Caniff appealed convictions for three federal child sex offenses. The Court affirmed and held "that Caniff's text messages asking a person he thought was a minor to send him sexually explicit pictures of herself can support a conviction for making a 'notice' to receive child pornography in violation of 18 U.S.C. s. 2251(d)(1)(A).

That statute applies to a person who, inter alia, "knowingly makes . . . any notice or advertisement seeking . . . to receive . . . any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct . . . ." The term "notice" was not defined in the statute and was thus given its "ordinary or common, everyday meaning." "A jury could find that Caniff's text messages to Mandy seeking sexually explicit photos fit this common meaning of 'notice.'" The Court rejected the argument that "a 'notice' must be sent to the general public or at least to a group of people. The most common usage of the word 'notice' is not limited exclusively to a public or group component," even though it can be made to the general public.

One judge dissented from this portion of the Court's opinion.

First District Court of Appeal

Byram v. State, 1D17-26 (Feb. 15, 2019)

A "defendant's continuous resistance to an ongoing attempt to effect his arrest can be convicted only as one count of resisting arrest." Accordingly, a second conviction in this case was reversed as a double jeopardy violation.

Dortch v. State, 1D17-3363 (Feb. 15, 2019)

Dortch was a juvenile at the time of the multiple crimes – sexual battery and armed robbery – for which he was convicted and sentenced in1994. After Graham v. Florida, 560 U.S. 48 (2010), his life sentences were corrected and he received concurrent terms of 40 years in prison for the sexual battery and one of the robbery counts, both of which were consecutive to the other robbery and with the sentence in a separate case. In an appeal from that, in 2014, the First District reversed for resentencing because the trial court failed to run all of the sentences concurrently in accordance with a prior stipulation of the parties. The trial court, however, rather than simply running all sentences concurrently on remand gave Dortch a full

resentencing under the 2014 juvenile sentencing laws and imposed concurrent life sentences on all of the charges.

Dortch appealed and argued that the trial court acted in excess of the prior mandate to run the sentences concurrently. The First District disagreed, noting its own language from the prior opinion, that Dortch was "entitled to be resentenced in accordance with the stipulation," and the conclusion of that prior opinion: "Reversed and remanded" with no directions.

Nor was there a double jeopardy violation. Double jeopardy "only attaches to legal sentences," and when Dortch received his most recent resentence the State could again seek life imprisonment with judicial review. The 40-year sentences that had been imposed in the interim were also illegal under Florida Supreme Court decisions, and double jeopardy therefore did not apply.

Finally, after the latest full resentencing, the trial court made the necessary statutory findings – i.e., "that all relevant factors have been reviewed and considered by the court prior to imposing a sentence of life imprisonment or a term of years equal to life imprisonment." Rule 3.781(c) does not require the court to go further than that, and the court was not required to make specific findings as to the eight separate factors that are enumerated in section 921.1402(2), Florida Statutes.

One judge dissented and would have concluded that under the circumstances of this case, the stipulation regarding concurrent 40-year sentences should have been adhered to.

Mickles v. State, 1D18-0423 (Feb. 15, 2019)

This was an appeal from the denial of a Rule 3.850 motion, which the First District reversed.

"When a plea agreement places a cap on the term of incarceration, 'the trial court must apprise the defendant that the period of incarceration specified in the plea agreement will be followed by a period of probation, if such is the court's intent.'" "Here, the trial court failed to apprise appellant of its intent to impose a probationary period in addition to the term of incarceration specified in the plea agreement. Because appellant did not move to withdraw his plea, this claim could not have been reached on direct appeal and was properly raised through a rule 3.850 motion. [citation omitted]. Thus, we reverse and remand for the trial court either to

resentence appellant within the agree-upon range or to afford him the opportunity to withdraw his plea."

Brown v. State, 1D18-0518 (Feb. 15, 2019)

After Brown was released from prison to start his probation, he was transferred to the Florida Civil Commitment Center, for pending civil commitment proceedings under the Sexually Violent Predators Acts. He then filed a Rule 3.850 motion, alleging that the placement in the FCCC was illegal because the trial court lacked jurisdiction to revoke his probation, and that the "enhancement" of his probation with the commitment detention was a double jeopardy violation.

The claims were rejected because involuntary commitment for sexual predators is civil commitment, not punishment. And, probation was not revoked; it commenced when the prison sentence ended and Brown was transferred to the commitment facility.

Jackson v. State, 1D13-5687 (Feb. 11, 2019)

On remand from the Florida Supreme Court for reconsideration in light of Miller v. State, 43 Fla. L. Weekly S426 (Fla. Oct. 4, 2018), the First District determined "that appellant was illegally sentenced to consecutive mandatory minimum sentences for attempted murder in the second degree and possession of a firearm by a convicted felon."

Wade v. State, 1D17-1233 (Feb. 11, 2019)

On appeal from a conviction for sexual battery, Wade argued that he was denied his right to conflict-free counsel and that there was an actual conflict.

Wade was represented by an attorney with the Office of Criminal Conflict and Civil Regional Counsel. During trial, that attorney discovered that an attorney from the same office was representing the victim in an unrelated dependency proceeding; the trial attorney had been unaware of that previously. The judge obtained a waiver of any possible conflict from Wade and stated that "an actual conflict has not really surfaced." On appeal, Wade argued that it was an actual conflict. The First District disagreed.

An actual conflict is one that affected counsel's performance, not a "'mere theoretical division of loyalties.'" No showing of an actual conflict was made. The

Court noted trial counsel's "vigorous" cross-examination of the victim and assertion that nothing from the dependency case would affect her representation of Wade. Nothing in the record suggested otherwise.

There was no abuse of discretion in admitting collateral offense evidence from two other sexual-assault victims. "Here, it was certainly relevant that Wade had approached other women on a bicycle and forced sex at knifepoint – if for no other reason than to refute Wade's argument that the events leading to his charges were consensual."

State v. Bohler, 1D17-5343 (Feb. 11, 2019)

The State appealed the granting of a motion for new trial after a jury found Bohler guilty of drug possession. The trial court granted the motion based on its assessment of the weight of the evidence and credibility determinations of the witnesses. The First District affirmed, and found that the trial court did what it was supposed to do when ruling on a motion for new trial: "it weighed the evidence and considered witness credibility. It concluded that the informant – the State's principal witness – had little credibility, noting that he had fought with Bohler, had business disputes with Bohler, and had a strong desire to make a drug buy to secure a favorable sentence in his own criminal case."

Although the trial court appears to have erred in considering some evidence that was not presented to the jury, that did not affect the First District's conclusion, because the trial court's "determinations about the evidence that *was* presented is enough to uphold the court's order. In short, the State has not met its difficult burden of showing an abuse of discretion."

E.W. v. State, 1D18-1476 (Feb. 11, 2019)

The First District reversed an adjudication for delinquency for trespassing on school grounds because the State "failed to present a prima facie case of guilt because there was no evidence appellant was on school grounds for an illegitimate purpose."

Video and GPS evidence showed that E.W. was on the grounds of the school in a car that drove by the front office. "There was no evidence the car stopped or was anywhere other than the public driveway for a very short period of time. The school's assistant principal testified that appellant was not a registered student and did not check in with the front office. This evidence alone, however, does not prove

that appellant was on school grounds for an illegitimate purpose." An "illegitimate purpose" was an essential element of the charged offense.

Second District Court of Appeal

Culver v. State, 2D16-5541 (Feb. 15, 2019)

The Second District reversed the trial court's order summarily denying a motion to withdraw plea after sentencing for revocation of probation, because the motion set forth a facially sufficient claim that the plea was involuntary due to counsel's misrepresentations.

At the plea hearing, both counsel and Culver "informed the trial court that they believed Culver was entitled to credit pursuant to Tripp v. State, 622 So. 2d 941, 942 (Fla. 1993), in which the Florida Supreme Court 'h[e]ld that if a trial court imposes a term of probation on one offense consecutive to a sentence of incarceration on another offense, credit for time served on the first offense must be awarded on the sentence imposed after revocation of probation on the second offense.'" Although the trial court's order directed DOC to apply the Tripp credit, that did "not resolve Culver's allegation that counsel misrepresented to him that based on the combination of credits due to him, entering a plea for twenty-seven years' prison time would result in a 'time served' sentence by which he would not serve any new prison time. This claim alleged an adversarial relationship between Culver and defense counsel and therefore entitled Culver to a limited hearing as described in Sheppard[v. State] to determine if it was necessary to appoint conflict-free counsel to represent Culver on his motion to withdraw plea." On remand, the trial court must conduct an evidentiary hearing after determining if Culver was entitled to conflict-free counsel.

McDonald v. State, 2D17-4532 (Feb. 15, 2019)

One of the charges of probation violation, being arrested for murder, was not established by the evidence. As other grounds were, the revocation was affirmed.

The State, after including the arrest as a ground for violation of probation, nolle prossed the charge and never filed any other charges arising from the shooting incident. The ground in question as amended to allege "by being arrested for the criminal offense of Possession of a Firearm by a Convicted Felon." However, no evidence was presented as to an arrest or a charge for possession ever being filed.

Grady v. State, 2D16-3324 (Feb. 13, 2019)

One of the violations of probation found by the trial court was not supported by evidence – failing to comply with instructions of the probation officer. That violation was stricken from the trial court's order, but the revocation itself was affirmed based on other violations.

Grady was instructed by the probation officer to provide a urine sample for drug testing. "When Grady failed to provide a sufficient sample, the probation officer told him to stay at the office and drink water until he could provide a sufficient a sample. After waiting at the office for several hours, Grady left without providing a sample." Grady testified that after his first sample was rejected as being insufficient, he stayed and drank water but was dehydrated and could not provide another sample. He also testified about health problems, including diabetes, and said that he felt very ill while he was waiting at the probation office, where there was no food and he finally left to get food to avoid a diabetic incident.

Although the trial court found that Grady failed to comply with instructions, on a related violation, refusing to submit to random testing as directed by the officer, the trial court found that Grady was not guilty of that charge because he did provide a sample, albeit an insufficient one. The two findings were held by the Second District to be legally inconsistent.

Caruso v. State, 2D16-5185 (Feb. 13, 2019)

The Second District affirmed the denial of a presentencing motion to withdraw plea. After the filing of the notice of appeal, the State filed a motion to modify the sentence to include a four-year mandatory minimum term of imprisonment.

The notice of appeal vested the appellate court with jurisdiction, which was not relinquished. The trial court did not have jurisdiction to entertain the State's motion. While Rule 3.800(b)(2) authorizes motions to correct sentences during the pendency of a direct appeal, such motions on behalf of the State are limited and available only to either benefit the defendant or to correct a scrivener's error. This was not a scrivener's error as it had not been orally pronounced at sentencing.

Hernandez v. State, 2D17-2656 (Feb. 13, 2019)

After the trial court denied a cause challenge based upon a conclusion that the prospective juror had been rehabilitated, defense counsel exercised a peremptory challenge. When the State requested a race-neutral reason, defense counsel reiterated the basis for the cause challenge – that the juror had made statements of concern regarding the burden of proof. The judge denied the peremptory, finding that it was not race-neutral because the reason for the peremptory was the same as the reason or the cause challenge. Defense counsel tried to revisit that ruling again, on the basis of case law. Subsequently, the jury was sworn without objection.

The issue regarding the peremptory challenge was not preserved for appellate review because the objection was not renewed before the jury was sworn in, "creating the presumption that he abandoned any objection." But for the lack of preservation, the appellate court would have reversed. While the trial court judge "may have disagreed with the basis of Hernandez's challenge for cause, . . . that in no way precluded Hernandez from using a peremptory challenge against Vasciana. Hernandez was only required to articulate his objection to Vasciana to show he was not motivated by racial discrimination."

Third District Court of Appeal

Mendez v. State, 3D16-169 (Feb. 13, 2019)

Mendez appealed convictions for lewd or lascivious molestation of a minor and sexual battery on a minor.

The two incidents were alleged to have occurred on two different days; one involved touching under the underwear, one outside the underwear. During a pretrial forensic interview, the child described the two incidents to the interviewer. At trial, as to one incident, the child "did not recall the molestation incident she had described ruing her forensic interview." One answer was also a negative response as to whether she was touched on the exterior of her clothing.

The Third District found the evidence insufficient as to the incident which the child did not recall at trial and for which there was a negative response as to the question of having been touched on the exterior of the clothing. The reversal was based on a series of decisions from the Florida Supreme Court in which it has been held that a "prior inconsistent statement standing alone is insufficient as a matter of law to prove guilt beyond a reasonable doubt." This is true even when the prior

inconsistent statement is introduced into evidence under the child hearsay exception and comes into evidence as substantive evidence, not only for its value as impeachment evidence.

Additionally, the second conviction was reversed for a new trial because questioning of the child as to her recollection of the charged second offense elicited an answer regarding another incident that had not been charged. The Third District rejected the State's argument that this collateral offense evidence was relevant and inextricably intertwined with the charged offense. However, the "evidence of the uncharged act was not necessary to describe the crimes charged. . . . Here, evidence of the candy incident was not necessary to give a complete account of the molestation or the sexual battery. Indeed, the State concedes that it was not even aware of the candy incident before trial, which undermines its argument that this incident was an inseparable part of the charged offenses."

Simmons v. State, 3D17-832 (Feb. 13, 2019)

In 1997, Simmons received a resentencing, and the court imposed an upward departure sentence based on an escalating pattern of criminal activity. In 2014, he filed a motion to correct sentence, alleging that the trial court made that determination without jury findings regarding the escalating pattern and that that was a violation of Apprendi v. New Jersey, 530 U.S. 466 (2000) and Blakely v. Washington, 542 U.S. 296 (2004).

Although the Third District agreed that the findings regarding an escalating pattern had to be found by a jury, not the judge, Apprendi errors are subject to harmless error analysis and it was clear, based on the history of prior convictions, that such an escalating pattern existed and the error was harmless.

Additionally, the upward departure reason of an escalating pattern does not require an express finding that the defendant is not amenable to rehabilitation. The "fact that the defendant may not be amenable to rehabilitation is evidence of – clearly shown by – the finding of an escalating pattern of criminal conduct. By finding that Simmons engaged in an escalating course of criminal conduct, the trial court established that he was not amenable to rehabilitation."

The 50-year sentence, however, was reversed and reduced to 40 years, because it exceeded the statutory maximum. The offense occurred on January 30, 1997, and Simmons was entitled to be resentenced under the 1994 version of the sentencing guidelines. "Under the 1994 version of the sentencing guidelines, the

legal maximum for the offense of second degree murder was a term of years not exceeding forty years. [Section] 772.082(3)(a), Fla. Stat. (1993)."

This holding was based on Miranda v. State, 832 So. 2d 937, 941 (Fla. 3d DCA 2002), which explained that for an offense second-degree murder with a weapon, committed in 1993, the offense was a life felony; and, at that time, the penalty for a life felony was either a term of years up to 40 years or life imprisonment; terms of years in excess of 40 but less than life were not authorized.

J.R. v. State, 3D18-494 (Feb. 13, 2019)

A finding that J.R. possessed cocaine was reversed due to the erroneous admission of immaterial evidence, which the trial court did not expressly disavow reliance upon.

When testifying as to the incident, an officer testified that the area in question was one which the police "were having trouble with. We had a lot of shootings, stabbings." The trial court overruled an objection based on relevance. The prosecutor, in closing argument, relied on the evidence that the neighborhood was one "known for its issues."

Evidence of an arrest in a high crime area is generally inadmissible and is also generally prejudicial because of "its tendency to establish guilt by association." In a bench trial, the harmless error analysis is conducted on the basis of Petion v. State, 48 So. 3d 726 (Fla. 2010). While a trial court is presumed to have disregarded inadmissible evidence, that presumption must be overcome when the judge erroneously admits the evidence over objection. Thus, unless the record on appeal demonstrates the presumption is rebutted by an express statement by the trial court judge that the erroneously admitted evidence did not contribute to the final determination, the appellate court must treat the evidence as evidence that the trial court did rely on. Beyond that, the appellate court must then conduct harmless error analysis "to determine whether there is a reasonable possibility that the challenged error affected the final judgment."

In this case, although the judge did not reference the improper testimony in the findings at the end of the case, that was not enough, as there was no "express statement on the record that the evidence did not contribute to "the final determination. As the case involved credibility determinations, and the reference to the high crime nature of the area occurred two times in addition to the prosecutor's closing argument, the error could not be deemed harmless.

State v. Lorenzo, 3D18-911 (Feb. 13, 2019)

The State appealed an order granting a Rule 3.850 motion. The Third District reversed because he motion was filed past the two-year time limit established by Green v. State, 944 So. 2d 208 (Fla. 2006).

The motion as filed in 2018, seeking to vacate a plea from 2000, as involuntary, based on an alleged failure of the court to inform the defendant of immigration consequences to the plea as a non-citizen. Green held that the two-year period for filing a Rule 3.850 motion, running from the finality of the conviction, must be complied with unless "the fact that the plea subjected the defendant to deportation could not have been ascertained during the two-year period with the exercise of due diligence. It will not be enough to allege that the defendant learned of the possibility of deportation only upon the commencement of deportation proceedings after the two-year limitations period has expired."

In this case, Lorenzo relied on evidence that he traveled to and from Cuba on five occasions, each time re-entering the United States without issue, until 2017, when his U.S. resident card and Cuban passport were confiscated at the Miami International Airport and he was ordered to appear for Deferred Inspection by Border Protection agents.

Planas v. State, 3D18-2635 (Feb. 13, 2019)

Rule 3.800(a) permits challenges to illegal sentences; it may not be used to allege challenges to the underlying conviction.

Fourth District Court of Appeal

Randall v. State, 4D17-2012 (Feb. 13, 2019)

Randall appealed his conviction as a principal for manslaughter with a deadly weapon. The Fourth District reversed because the evidence was insufficient, as "the State failed to prove that he intended the crime to be committed or that he did any act to assist in the crime."

The victim had been found bleeding profusely behind a building near a bus station. During their investigation, the police located a woman, Michelle, who had been looking for drugs in that area and encountered the victim. A drug dealer, "Taz,"

introduced Michelle and the victim. After an argument between Michelle and the victim ensued, Michelle spoke to Taz, who returned to the area with Randall, for the purpose of speaking to the victim to tell him not to be so rough with Michelle.

Randall told the police that when he went to the area in question with Taz, the victim approached them; Taz hit the victim, the victim swung at Randall, Randall then hit the victim and Taz then cut the victim with a knife. In a second statement, Randall said he and Taz went to confront the victim "about putting his hands on Michelle and taking her money." An argument ensued and Taz initiated aggression by hitting the victim.

"There was no evidence that Randall and Taz had the intent to commit any crime when they confronted the victim in the alley. The only evidence showed that they were simply trying to protect Michelle. Although the State argued that Taz and Randall were going to commit a robbery, there was no proof to support that theory."

"The State's evidence that Randall committed any act to assist in the crime is also lacking. The State had to prove that Randall intended that an act constituting culpable negligence be committed and that he did some act to assist in that crime, not that Randall intended that the victim be stabbed. . . . The only evidence was that Randall accompanied Taz to tell the victim not to rough up Michelle. There is nothing to show that Randall should reasonably have known that this was likely to cause death or great bodily harm." The only evidence of what Randall did was his own statements to the police, and he said that he hit the victim "only after the victim swung at him."

McDonald v. State, 4D17-3323 (Feb. 13, 2019)

McDonald was convicted of crimes for which he was not charged. The convictions were for robbery with a deadly weapon and attempted robbery with a deadly weapon. The information charged robbery with a firearm and attempted robbery with a firearm.

One theory of defense at trial was that the defendant had a BB gun, not a firearm. Although the State presented contrary evidence, the jury verdict form provided options, including choices between a weapon, a deadly weapon, and a firearm. The jury opted for a deadly weapon. As the deadly weapon was not charged, it could not provide the basis for a conviction.

State v. Ester, 4D18-2648 (Feb. 13, 2019)

The State appealed the lower court's order withholding adjudication of guilt and the Fourth District reversed. The defendant had two previous withholds of adjudication, "neither of which arose from the grand theft charge before the trial court." Under such circumstances, section 775.08435(1)(d), Florida Statutes (2018), prohibits the withholding of adjudication.

State of Florida, Department of Highway Safety and Motor Vehicles v. Davis, 4D18-2772 (Feb. 13, 2019)

Davis was found slumped over a steering wheel, "unresponsive and smelling strongly of alcohol." An officer had him transported to a hospital. When Davis regained consciousness, the officer read him Miranda warnings and questioned him, and Davis admitted to having five drinks and then attempting to drive home. At the hospital, Davis consented to a blood draw and the result was 0.412. The Department suspended his license for six months, which he challenged, and a hearing officer affirmed the suspension.

Davis sought review in the circuit court, which reversed the suspension, relying on Chu v. State, 521 So. 2d 330 (Fla. 4th DCA 1988), "for the proposition that the blood draw at issue was not legislatively authorized under Florida's implied consent law because nothing in the record suggested that a breath or urine test was impossible or impractical."

The Department sought further certiorari review in the Fourth District, which quashed the Circuit Court's order. The controlling decision was State v. Dubiel, 958 So. 2d 486 (Fla. 4th DCA 2007), which made the distinction that the individual in question was in the hospital when the blood draw was requested, whereas in Chu, the blood draw was not done in a hospital or other medical facility and was not legislatively authorized. "Here, like the defendant in Dubiel, Respondent was in the hospital when the officer requested a blood draw and Respondent voluntarily consented."

Fifth District Court of Appeal

Adams v. State, 5D18-1142 (Feb. 15, 2019)

Adams sought review of prison disciplinary proceedings, alleging due process violations, as a result of which he was assigned for 30 days to the "disciplinary

squad." While "the due process clause entitles inmates in disciplinary proceedings to certain minimum procedures to protect their liberty interests," it "does not protect every change in the conditions of confinement having a substantial adverse impact on an inmate." Due process is implicated "only when a restraint 'imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.'" The assignment to the disciplinary squad for 30 days was "not the type of 'atypical' or 'significant' hardship sufficient to give rise to a liberty interest protected by the due process clause."