Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Johnson, 16-15690 (April 16, 2019)

In an en banc decision, the Court decided whether "a police officer violated the Fourth Amendment when he removed a round of live ammunition and a holster from the pocket of a suspect during a live protective frisk."

The officer responded to a call regarding a burglary and found Johnson, who matched the description provided, in a dark alley. The officer detained and frisked Johnson and recognized the feel of a round of ammunition in Johnson's pocket. He removed the ammunition and a holster from the pocket. The officer then found two pistols less than a foot from where he first saw Johnson.

The en banc court affirmed because the officer was entitled to seize the ammunition to protect himself and others. The seizure of the ammunition and holster were within the scope of a Terry stop to make sure that the ammunition in the pocket would not be loaded in a weapon and used against the officer.

There are several concurring and dissenting opinions. One of the dissents takes the position that a Terry stop is directed towards the discovery of weapons, and asserts that ammunition is not the same as a weapon.

United States v. Corbett, 18-13203 (April 17, 2019)

Corbett pled guilty to participation in an identity-fraud conspiracy. On appeal, he challenged two sentencing enhancements. The Eleventh Circuit agreed that the imposition of one constituted plain error – the ten-or-more victims enhancement. The district court erred by counting "as a victim any individual whose means of identification was stolen regardless of whether it was 'used' as a means of identification."

In cases involving victims and identification, victim is defined in the sentencing enhancement as "any individual whose means of identification was used unlawfully or without authority." While the case involved more than 1,700 victims,

the government did not prove that more than 10 had means of identification used unlawfully or without authority.

United States v. Gordillo, 18-12095 (April 17, 2019)

Gordillo pled guilty to possession of a firearm or ammunition by a prohibited person – an alien unlawfully in the United States.

The district court, at sentencing, applied the base offense level of 20, which "accrues where the defendant was a prohibited person at the time of the offense and the offense involved a semiautomatic firearm in 'close proximity' to a high-capacity magazine." This case presented the issue of whether the firearm and magazine were in "close proximity." A locked firearm was in a gun case in the defendant's bedroom and the magazine and gun-range bag were no more than ten feet away. The Eleventh Circuit upheld the application of the base offense level.

The Court stated that proximity encompasses both "physical distance and accessibility." Physical distance is necessary, but may not suffice by itself. The distance of ten feet within a single room satisfied the physical distance component. And, although the gun was locked, it was still deemed accessible. The Court noted that the defendant did not present any arguments as to how long it would take to retrieve the magazines from the gun bag, unlock the case and insert a magazine into the firearm.

First District Court of Appeal

Rogers v. State, 1D17-3522 (April 16, 2019)

"Because the jury found that the appellant committed multiple firearm offenses without discharging the firearm during a single criminal episode, the trial court erred in imposing mandatory minimum sentences."

Russell v. State, 1D17-4925 (April 16, 2019)

In an appeal from a conviction for aggravated stalking, the First District held that the trial court did not abuse its discretion "by admitting Appellant's text messages to the victim as impeachment evidence."

The victim, the defendant's wife, obtained a domestic violence injunction against the defendant. The State adduced evidence of stalking behavior which

included more than 100 phone calls to the victim's office during a single afternoon. The defendant testified on his own behalf and acknowledged making the phone calls, but claimed that he and his wife had an on-again, off-again relationship, and that he was calling to calm her down because she was upset about his relationships with other women.

The State introduced the text messages on cross-examination of the defendant. "In those messages, Appellant demanded to know why the victim would not answer the phone at work when he called and threatened to call her office nonstop regardless of any restraining order, come over to her office, and beat her like she was a man."

The defendant argued that this was improper impeachment because it did not contradict his testimony from direct examination. However, the Court found that it contradicted his testimony that the victim "repeatedly initiated contact with him because she wanted them to get back together. The texts showed it was Appellant who insisted on communicating with the victim despite her efforts to avoid any further contact with him."

Bradley v. State, 1D17-5463 (April 16, 2019)

Consecutive mandatory minimum sentences under section 775.087(2), Florida Statutes, were reversed and remanded for imposition of concurrent sentences because "consecutive sentences are permissible for single-episode crimes only when there are either multiple victims or multiple injuries – neither of which was the case here."

Reinard v. State, 1D18-6 (April 16, 2019)

In an appeal from a revocation of probation based on the commission of a new offense – aggravated child abuse – the defendant challenged the sufficiency of evidence as to whether the child suffered any physical harm. The First District found the evidence to be sufficient and affirmed the revocation.

The defendant, as a form of punishment for his girlfriend's child, who defecated in his clothing, pushed feces in the child's face and forced the child to eat the feces.

Second District Court of Appeal

Whitham v. State, 2D16-3388 (April 17, 2019)

Relying on the Court's own prior decision in Martin v. State, the Second District held that the 2017 amendment to the burden of proof in the Stand Your Ground statute applied retroactively, and that the defendant was entitled to a new immunity hearing on remand. As in other cases, the Second District certified conflict with decisions of the Third and Fourth Districts.

Third District Court of Appeal

Ventura v. State, 3D18-2411 (April 17, 2019)

Appeals from orders denying a motion to dismiss for a violation of Brady v. Maryland, a motion to protect the defendant's constitutional rights, and a motion to identify subject matter jurisdiction were dismissed for lack of jurisdiction as the orders were not appealable.

J.A. v. Housel, 3D19-692 (April 17, 2019)

A habeas corpus petition challenging secure detention was granted.

During the pendency of a delinquency proceeding, J.A. was held in contempt of court for violating a "do not run" order by running away from home and staying away for 10 days. J.A. was sentenced to 100 days in secure detention. J.A. then obtained placement into a residential psychiatric and substance abuse treatment program, and the secure detention was mitigated to the 24 days that had already been served. About 10 weeks later, J.A. was discharged from the program due to inappropriate relations with other patients and the trial court reinstated the balance of the 100 days of secure detention from the contempt.

"Because the trial court mitigated J.A.'s 100-day sentence to the twenty-four days already served in secure detention, and attached no conditions, the trial court was without authority to 'reimpose' any portion of the original 100-day sentence following J.A.'s unsuccessful discharge from [the program]."

Fourth District Court of Appeal

Razz v. State, 4D16-2400 (April 17, 2019)

On remand from the Florida Supreme Court, the Fourth District held, pursuant to State v. Lewars, 259 So. 3d 793 (Fla. 2018), that "[b]ecause Appellant was released from county jail in the three-year period preceding the qualifying offenses, he was not a prison releasee reoffender and resentencing was required. . . ." Lewars held that PRR status was inapplicable when the release was from county jail, as opposed to state prison.

Lacue v. State, 4D17-1300 (April 17, 2019)

Lacue, a juvenile at the time of the offenses for which he was convicted and for which he received life sentences – murder and armed robbery – was resentenced subsequent to Miller v. Alabama. In the current appeal, the State conceded that the post-Miller sentence of life should be remanded with instructions to provide for sentence review after 25 years.

Stubbs v. State, 4D17-3295 (April 17, 2019)

Stubbs appealed a conviction for unlawful sexual activity with a minor. The Fourth District affirmed and addressed the admissibility of similar fact evidence – the experience of two other young women with the defendant.

The victim in this case and the two other women all attended the church at which the defendant was the pastor. The Fourth District highlighted the commonalities between the different cases: all victims were between 16 and 19; all were members of the same church; the defendant justified his conduct through religious teaching or sexual education with all three; the defendant used his position of religious authority in all cases and all victims believed that his actions were sanctioned by God; the defendant used his position in the church to gain access to the girls alone; the defendant was involved in everyday decision-making of each girl; and the defendant had union with or penetrated the vagina of each girl.

Rutledge v. State, 4D17-3659 (April 17, 2019)

Rutledge was charged with first-degree murder and conspiracy to commit first-degree murder. At his first trial, he was acquitted on the conspiracy charge.

The murder conviction was reversed for a new trial based on an issue related to a conflict of interest.

At the retrial, Rutledge argued that because he was acquitted on the conspiracy charge, collateral estoppel principles barred the State from introducing evidence that he solicited an acquaintance to murder the victim. The Fourth District disagreed and affirmed the conviction.

As a general proposition, "'evidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial.'" "The collateral estoppel component of double jeopardy does not, however, bar the government from retrying a defendant after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal, and the convictions are later vacated for legal error unrelated to the inconsistency." "Stated another way, a defendant cannot meet the burden of demonstrating that an issue was actually decided by a prior jury's acquittal 'when the same jury returns irreconcilably inconsistent verdicts on the question she seeks to shield from reconsideration.'"

Upon a review of the testimony from the case, the Fourth District found that the first jury's verdicts were irreconcilably inconsistent. As the remaining conviction proceeded to an appeal where it was reversed on an unrelated ground, the State was not barred from presenting the evidence of the factual solicitation at the subsequent murder trial.

Johnson v. State, 4D18-1084 (April 17, 2019)

The Fourth District reversed convictions for two counts of second-degree murder and other offenses based on its conclusion that statements made by the defendant to an interrogating officer were involuntary. The officer engaged in constant "requests imploring appellant to invoke self-defense" and then gave the defendant an "'unrealistic hope' as to the viability of invoking self-defense." As a result, the defendant did not understand his "true position," especially as some of the officer's statements to the defendant appeared to condone the defendant's actions.

Two victims were found dead in a vehicle with multiple gunshot wounds and bullet holes in the car along with shattered windows. The wounds were consistent with someone having shot the victims from behind. "[W]hen reading the entire interrogation it is clear the officer made numerous statements giving appellant the clear impression that admitting to shooting the two victims in 'self-defense' would be appellant's 'only way out.'"

The defendant originally claimed to have been at his father's house; not at the scene of the shooting. "Appellant's 'unrealistic hope and delusions as to his true position' were constantly fueled by the officer during the interrogation." At one point, the defendant inquired if he would go to jail if he admitted to it being self-defense, and the officer said that he would not go to jail for that.

Eventually, the defendant agreed and presented a version of self-defense based upon having been threatened by the victims. "The fact that appellant left the scene, returned armed, and shot the victims in the back multiple times from a distance while the victims were sitting in a parked car would mitigate against invoking self-defense on the day of the fatal shooting."

Additionally, the officer "misrepresented the law to appellant on several occasions, for example by stating that appellant would not 'be able to come up with that defense again,' when in reality appellant was not foreclosed from invoking self-defense later in the process up until a potential trial."

Brown v. State, 4D18-3270 (April 17, 2019)

The Fourth District reversed the summary denial of a Rule 3.850 motion which did not attached documents to conclusively refute the claim. The motion alleged that the Department of Corrections' forfeiture of gain time "thwarted the intent of his plea agreement." "All of our sister courts have found it sufficient for a defendant to allege that the Department's forfeiture of gain time has thwarted the intent of the plea agreement *for a particular length of sentence*, which the defendant alleged here."

"Specifically, the defendant's motion characterized his plea agreement as having 'agreed to plead guilty to the violation for a specific sentence of 55 months, with 592 day[s] time served for jail credit with credit for ALL time previously served in prison,' which the defendant alleged was an additional 501 days." It was further alleged that DOC forfeited 156 days of gain time.

Fifth District Court of Appeal

Slinger v. State, 5D17-3829 (April 18, 2019)

The defendant's first trial resulted in convictions and sentences for two sex offenses. Sentence was imposed with a PSI report having been prepared and

considered. An appeal resulted in a new trial being ordered. The defendant was again convicted and, prior to sentence, requested a new PSI report. The trial court declined, based on the rationale that the defendant had been incarcerated continuously since the first trial and that a new PSI report was therefore not needed. The Fifth District disagreed.

Rule 3.710(a) provides that a sentence may not be imposed for anyone convicted for a first felony without a PSI report being considered. The Court rejected the State's harmless error argument which asserted that a PSI had previously been prepared and that nothing new would have been added. The Court noted that there was no indication that the trial court had even considered the original PSI report.

State v. Griffin, 5D18-1781 (April 18, 2019)

The defendant was charged with sexual battery and incest. The victim, a minor and his daughter, gave birth to an infant with a chromosomal defect indicative of incest. When she was interviewed, she told law enforcement that she had sexual intercourse with the defendant, while he was sleeping, and that he was unaware. The defendant gave a statement to the same effect, adding that he was on psychotropic medication at the time. The trial court granted a sworn motion to dismiss. The Fifth District reversed.

There was clear evidence of sexual battery. The jury could choose to believe whether or not the defendant was physically helpless and unable to knowingly or willingly engage in sexual intercourse. Whether the defendant did so "is a question of general intent to be determined by the trier of fact and thus, 'not an issue to be decided by the trial court on a [r]ule 3.190(c)(4) motion to dismiss.'"

State v. Wilson, 5D18-2117 (April 18, 2019)

Wilson was charged with two drug offenses. The trial court granted a motion to suppress, finding that a traffic stop for failing to maintain a single lane was not supported by probable cause. The Fifth District disagreed and reversed.

"The failure to maintain a single lane alone cannot establish probable cause when the action is done safely. . . . Nevertheless, a stop for failure to maintain a single lane may be justified when the vehicle is being operated in an unusual manner." "Here, Deputy Payne's uncontradicted testimony was that Wilson drifted from his lane of traffic and an adjacent vehicle had to brake suddenly to avoid a collision."

Freeman v. State, 5D18-3187 (April 18, 2019)

In an annual review proceeding under the sexually violent predators civil commitment act, the trial court entered an order finding that there was no probable cause for annual review. The State conceded that the case should be remanded to the trial court because the parties were not before the court for the probable cause determination and the trial court failed to address whether the State met its burden under the controlling statute.

Mitchell v. State, 5D18-3811 (April 18, 2019)

Mitchell was charged with armed robbery and possession of a firearm by a convicted felon. In a bifurcated trial, he was first found guilty of armed robbery. By separate verdict, the jury found that he did not "carry, display, use or possess a firearm in the commission of the offense." On appeal, Mitchell argued that these findings were inconsistent and that the armed robbery conviction could not stand.

The Fifth District disagreed. "Significantly, in the present case, Mitchell was, in fact, convicted of the charged offense of robbery with a firearm or a deadly weapon." Defense counsel argued that "the manager was mistaken in his belief that Mitchell actually possessed a gun." "The evidence also supported that Mitchell was threatening the manager with a weapon in a fashion to make it look like he had a 'real' firearm."