Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Whyte, 17-15223 (July 10, 2019)

The Eleventh Circuit addressed the issue of "whether the government may prove sex trafficking of a minor, 18 U.S.C. s. 1591, by establishing only that a defendant had a reasonable opportunity to observe the minor victim instead of proving that he knew or recklessly disregarded the victim's age." The Court held that a 2015 amendment to section 1591 "makes clear that the government may satisfy its burden by proving that the defendant had a reasonable opportunity to observe the minor victim."

The relevant language of section 1591(a)(1) was: "Whoever knowingly . . . recruits, entices, harbors, . . . maintains, patronizes or solicits by an means a person . . . knowing, or, . . . in reckless disregard of the fact . . . that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished. . . ." Subsection (c) provided an exception: "In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the [victim], the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years."

When Congress amended the statute in 2015, it adopted comparable language used in an earlier Second Circuit Court of Appeals decision, approving of a reasonable opportunity to observe the victim as sufficient proof under the predecessor version of the statute.

The Court also reviewed, for plain error, an argument that the jury instructions "failed to explain the element of willfulness for [the] conspiracy charge and omitted an element for [the] sex trafficking charge." An instruction on willfulness mirrored the pattern jury instructions. One appellant, Castro, argued that "the instruction should have included knowledge of the victim's age as an element of the conspiracy because she could not willfully agree to commit sex trafficking of a minor if she did not know A.E. was a minor." The Court disagreed, because the "offense of sex trafficking of a minor does not require knowledge of the victim's status as a minor, so she cannot import such a requirement into her conspiracy offense."

As to the definition of a "commercial sex act," the district court did fail to identify "the essential element of knowledge or reckless disregard that A.E. would be caused to commit a commercial sex act in its numbered list of facts for the jury to find." Under the plain error standard of review, the Court considered the totality of the charge as a whole, to "determine 'whether the potential harm caused by the jury charge has been neutralized by the other instructions given at the trial such that reasonable jurors would not have been misled by the error.'" As the relevant language was found elsewhere in the instructions given to the jury, plain error did not exist.

A limitation on defense counsel's ability to cross-examine A.E., the victim, about whether she lied in her probation hearing to avoid imprisonment did not violate the opportunity for effective cross-examination. Defense counsel engaged in extensive cross-examination about A.E.'s bias and credibility during almost two days of cross-examination. This included "testimony from A.E. admitting to the jury that she had 'lied plenty of times in the past' to police officers and others." It also included a general question as to whether it was true that "the only reason you're here testifying is so that you don't get violated on your probation?"

Tribue v. United States, 18-10579 (July 11, 2019)

In a section 2255 motion to vacate sentence, Tribue argued that "the district court erred in relying on his 2007 conviction for delivery of cocaine to sustain his ACCA enhancement because the government waived reliance on the use of that conviction as an ACCA predicate." The Court held that the government did not waive reliance on that conviction, and documents from the section 2255 proceedings proved "the qualifying nature of that 2007 conviction."

Tribue's challenge to one predicate for the ACCA enhancement, which predicate no longer qualified as a violent offense based on subsequent Supreme Court case law, failed because regardless there was at least one other to satisfy the requirement for three predicate offenses.

As to the waiver argument, the PSI listed three predicates as supporting the enhancement and the PSI was adopted by the court without change or objection. Tribue therefore argued that the government waived the right on appeal to rely on another offense as an ACCA predicate when it was listed only in the criminal history section of the PSI but not as an offense qualifying as a predicate by the probation officer. The Court emphasized that Tribue admitted he had all of the convictions

listed in the PSI, so the 2007 conviction at issue was not in dispute. And, Tribue did not object to the enhancement at the original sentencing hearing. And, the government is not required to "prospectively address whether each and every conviction listed in the criminal history section of a PSI is an ACCA predicate in order to guard against potential future changes in the law and avoid later claims that it has waived use of those convictions as qualifying ACCA predicates."

First District Court of Appeal

Hartley v. State, 1D17-5073 (July 10, 2019)

The First District reversed the summary denial of one claim of ineffective assistance of counsel in a Rule 3.850 motion for further proceedings. Although the trial court was correct that counsel had, in fact, pursued a motion to suppress pretrial statements, the claim of ineffective assistance alleged that counsel was deficient for not pursuing a different legal theory. As the portions of the record attached to the trial court's order denying the Rule 3.850 motion did not conclusively refute this particular claim, further proceedings in the trial court were required.

Parker v. State, 1D17-3758 (July 9, 2019)

When there is a discrepancy between an oral pronouncement of sentence and the written sentence, the oral pronouncement prevails.

Cannon v. State, 1D18-1626 (July 9, 2019)

The First District affirmed the summary denial of a Rule 3.850 motion. The case had a lengthy post-conviction history, including a nine-hour evidentiary hearing on a prior motion. The Court wrote to address the problems that may arise when judges engage at "attempts at humor while on the bench, even if it is intended for the laudable purpose of reducing unnecessary tension in the courtroom. The judge's offhand comment here spawned years of postconviction litigation and multiple appeals in this case, all of which could have been avoided in the judge had simply exercised a little self-restraint."

State v. Boatman, 1D18-2808 (July 9, 2019)

The State sought "a writ of certiorari to quash an order prohibiting the use of hearsay statements by the child victim" in a prosecution for capital sexual battery and lewd or lascivious molestation. The First District granted the petition.

Addressing the State's burden in a certiorari proceeding, as to the element that the State "will suffer a material injury that cannot be corrected on appeal," the Court noted that when "a pretrial order significantly impairs the State's ability to prosecute by excluding critical evidence, the harm is irreparable because the State cannot appeal if the defendant is acquitted."

The child had made statements asserting that the defendant "raped" her. DNA anal swabs matched the defendant's DNA. Prior to trial, the child recanted. When determining whether the child's hearsay statements had sufficient indicia of reliability, the trial court emphasized a "reasonable hypothesis of innocence" that the defendant and his wife had engaged in sexual intercourse which, several further steps down the line resulted in the child being touched by a rag the defendant used for cleaning up afterwards. The trial court relied upon a theory of DNA transfer that had no support in any evidence. As the court's theories were wholly speculative, there was a departure from the essential requirements of law. The trial court had similarly diagnosed the child with a psychiatric disorder absent an evidentiary foundation.

Fountain v. State, 1D18-2883 (July 9, 2019)

Fountain appealed convictions for shooting at or into an occupied vehicle and aggravated assault. The First District affirmed and addressed the denial of a motion for mistrial which was directed towards the following comment by the prosecutor in closing argument:

> Now, you have seen the evidence, you have heard the testimony, and you are going to have all the evidence and testimony to take back with you. The only thing left to do in this instance is to apply the law the judge gives you to the facts and the testimony *and return a verdict that truth indicates and justice demands and that is that this defendant is guilty* as charged on both counts.

The Court was "not persuaded by Appellant's claim that, in this case, the prosecutor's comment – 'truth dictates and justice demands' – impermissibly invoked her status as the government's attorney in order to tip the scales in favor of conviction, or that it so inflamed the passions of the jury as to impel a guilty verdict. Instead, we agree with the trial court that, taken in the context, the prosecutor's statement was simply a reference to the strength of the State's evidence."

Whitfield v. State, 1D18-3025 (July 9, 2019)

Whitfield was originally sentenced to consecutive prison terms of 35 years and 30 years, with consecutive mandatory minimums of 25 years on each count. The consecutive mandatory minimums were previously reversed on direct appeal pursuant to Williams v. State, 186 So. 3d 989 (Fla. 2016). On remand, the trial court sentenced Whitfield to concurrent terms of 65 years with concurrent mandatory minimums. In a subsequent Rule 3.800(a) motion to correct illegal sentence, Whitfield argued that the increase from 35 and 30 years to 65 resulted in a double jeopardy violation. The First District disagreed.

Insofar as Whitfield had been challenging the prior sentence, he did not have a legitimate expectation of finality in it and double jeopardy principles therefore were inapplicable. Second, the new sentence was not more severe than the original; the lengths were equal.

McCrae v. State, 1D18-4115 (July 9, 2019)

Five years after McCrae's conviction and sentence became final, he filed a Rule 3.850 motion seeking relief under Montgomery v. State, 39 So. 3d 252 (Fla. 2010). The trial and appellate courts rejected the claim because, inter alia, Montgomery did not apply retroactively to previously final convictions. In 2018, he filed a habeas corpus petition in the trial court alleging manifest injustice on the basis of Montgomery and Haygood v. State, 109 So. 3d 735 (Fla. 2013).

Once again, it was found that those cases did not apply retroactively. "And because McCrae is not similarly situated to other defendants whose cases were not yet final when *Montgomery* was decided, denying him the same relief that those defendants received does not create a manifest injustice."

Johnson v. State, 1D18-4325 (July 9, 2019)

Johnson appealed a conviction for carrying a concealed weapon. Officers stopped his car at 2:00 a.m. for a traffic stop and smelled burnt marijuana. They detained Johnson, searched the car, and found the gun that resulted in the charge.

While Johnson acknowledged that the smell of marijuana established probable cause pursuant to prior court decisions, he argued that "those cases became irrelevant after Florida authorized medical marijuana." "He does not argue that he is a medical-

marijuana user; his argument is that the smell alone is no longer enough since someone might be a medical-marijuana user."

The Court rejected this argument. First, Florida's statute did not authorize smokable marijuana. Second, "Florida law did not allow use in 'a vehicle' other than 'for low-THC cannabis.'" Third, "possession of marijuana remains a crime under federal law." "Fourth, even if smoking marijuana were legal altogether, the officers would have had probable cause based on the fact that Johnson was operating a car," based on the criminalization of driving under the influence of drugs. Last, "the *possibility* that a driver might be a medical-marijuana user would not automatically defeat probable cause."

Second District Court of Appeal

Baker v. State, 2D17-2160 (July 10, 2019)

Baker, a juvenile at the time of the first-degree murder for which he was convicted in 1999, was sentenced to 50 years in prison without review after 25 years. He was not entitled to review after 25 years "because previous to his original sentencing on the first-degree murder count, he had been convicted of armed robbery and armed burglary arising out of criminal episodes separate from the one involving the murder."

A.L. v. State, 2D17-4572 (July 10, 2019)

The Second District reversed adjudications of delinquencies on four counts of petit theft and one count of criminal mischief because the evidence was insufficient. The case involved five vehicles that were broken into. Surveillance videos were introduced into evidence but did not enable an identification of the perpetrators; nor did any witnesses identify the perpetrators.

During the investigation, officers came to search the bedroom that A.L. shared with his brother, pursuant to the consent of an uncle who lived in the home. The bedroom was jointly occupied and officers observed several items that "were similar to the items that had been reported stolen."

This case was wholly circumstantial, and the State therefore had to refute the reasonable hypothesis of innocence advanced at trial, that someone other than A.L. placed those items in the room. The State was not entitled to the statutory inference based on possession of recently stolen property, as the State could not prove that

A.L. was "in exclusive possession of the recently stolen item charged in count eight because the victim did not identify the item found in the jointly occupied bedroom as the item missing from her vehicle."

As to the other charges, because "the items were found in a bedroom that A.L. shared with his brother and there was no other evidence linking A.L. to the thefts, we cannot conclude that his possession of the items was exclusive, recent, and involved a distinct and conscious assertion of possession."

Valero v. State, 2D18-912 (July 10, 2019)

A law enforcement officer had reasonable suspicion to stop Valero for driving on a suspended license. The officer had stopped Valero for traffic infractions two times in the prior eleven months and Valero was arrested on each of those occasions for driving on a suspended license as a habitual traffic offender.

Valero's argument was that that information was stale. However, the original suspension would have been for five years and subsequent arrests could have added on additional five-year suspensions.

Third District Court of Appeal

Staples v. State, 3D17-133 (July 10, 2019)

The Third District previously granted Staples a belated appeal regarding a nolo contendere plea entered as to a probation revocation. Staples then filed a motion to correct sentence. The trial court treated the motion as one under Rule 3.800(a), and denied it because Staples did not affirmatively allege that court records "demonstrate on their face an entitlement to relief."

The trial court erred in treating the motion as a 3.800(a) motion. As this was done during the course of a belated appeal, which was a direct appeal from the nolo plea, the motion should have been treated as one under rule 3.800(b), which does not contain the same requirement of alleging court records demonstrate on their face an entitlement to relief. And, once 60 days passed without a ruling on the motion, under Rule 3.800(b), the time for ruling expired and the trial court's order on the motion was a nullity.

Additionally, the errors alleged in the motion were not cognizable under Rule 3.800(b), as they were alleged errors in the sentencing process, not alleged

sentencing errors: a) an alleged lack of jurisdiction to revoke probation; and b) the failure to continue youthful offender status. Absent fundamental error, Staples was not entitled to relief.

As to the jurisdictional issue, Staples argued that he had already served in excess of six years under the youthful offender statute. However, the case involved a substantive violation of probation and the court had elected to impose a sentence in excess of the six-year cap, resulting in an adult sentence for which the defendant does not retain youthful offender status. This had occurred in 2011, prior to the current round of violations of probation.

Hayes v. State, 3D18-409 (July 10, 2019)

Hayes appealed a conviction for sexual battery and other offenses and argued that the "State committed fundamental error when it introduced irrelevant, prejudicial testimony from the victim that during the sexual battery by force Mr. Hayes told her he had done this to six other women and he did not want to kill her." The Third District disagreed and affirmed.

The "testimony that Mr. Hayes' threatened to kill her is clearly relevant to explain why she felt coerced into submission and complied with his commands."

State v. Quintanilla, 3D18-1483 (July 10, 2019)

The State appealed the suppression of blood alcohol analysis "garnered pursuant to a compulsory blood draw under section 316.1933, Florida Statutes (2019)."

Quintanilla's vehicle collided with a smaller vehicle and the driver of the other vehicle was rendered unconscious and subsequently died. A passenger of the other vehicle was ejected and seriously injured.

Upon arrival at the scene, officers "detected the strong odor of alcoholic beverage emanating from Quintana's breath," and further noticed bloodshot and watery eyes. Another officer arrived and was briefed on this. This officer confirmed that Quintanilla was the driver of the vehicle and also detected the odor and condition of the eyes. This officer ordered a nonconsensual, warrantless blood draw under section 316.1933, Florida Statutes. Quintanilla was charged with DUI manslaughter and DUI resulting in serious bodily injury.

The trial court granted suppression, finding "that an expert determination of driver fault was an element of section 316.1933, Florida Statutes, and proceeded to conclude that [the above-referenced officer's] qualifications were insufficient to endow him with the proficiency required to testify as an expert in traffic accident investigations."

The Third District first found that for purposes of the Fourth Amendment, probable cause existed based on the uncontroverted testimony from the suppression hearing that "demonstrated that [the officer] possessed knowledge Quintanilla was operating the motor vehicle, and immediately thereafter, Quintanilla was observed exuding the odor of an alcoholic beverage, and exhibiting an unsteady gain and limberness, with bloodshot, watery eyes."

The Court next addressed section 316.1933. Here, the Third District disagreed with the trial court's conclusion that the statute "imposed a requirement upon the State to establish, through an expert, Quintanilla was at fault for the accident, prior to subjecting him to a compulsory blood draw."

The statute requires "a law enforcement officer [to have] probable cause to believe that **a motor vehicle** driven by or in the actual physical control of a person under the influence of alcoholic beverages . . . **caused** the death of serious bodily injury of a human being. . . ." Thus, the probable cause relates to the motor vehicle causing the death or injury, rather that the particular person.

Wilson v. State, 3D19-456 (July 10, 2019)

In a trial court habeas corpus petition, Wilson alleged that the information charging him with armed robbery resulted in a conviction for an uncharged offense, because it alleged that he had taken "property," while he was convicted to "taking money." There was nothing in the record showing that Wilson was "misled as to what he was charged with or that he was prejudiced in the preparation of his defense."

Guerra v. State, 3D19-760 (July 10, 2019)

A trial court motion in Miami, alleging that Guerra was entitled to immediate release based on improper calculations of gain-time, should have been treated as a habeas corpus petition and transferred to the circuit court in which Guerra was convicted.

Fourth District Court of Appeal

Natal v. State, 4D17-1271 (July 10, 2019) (on rehearing)

The Court affirmed a conviction for reckless driving and concluded that the defendant's "speed was grossly excessive under the circumstances."

The victim's vehicle was driving west, preparing to make a left-hand turn. The driver believed it was safe to do so, seeing an oncoming vehicle about two football fields away. When he started to turn, his van was broadsided on the passenger side by the defendant's vehicle.

The defendant had been driving eastbound on the same road. Witnesses testified that his car had been "zooming by other vehicles on the road" prior to the crash. The defendant had either braked for only a very small amount of time or not at all. Based on a video of the area, an officer determined that the defendant's vehicle was going between 82 and 95 miles per hour in a 40 mile per hour zone. Expert testimony was given to the effect that five seconds prior to the crash the vehicle was going 68 miles per hour; four seconds before the crash it was 76 miles per hour, with the throttle at 100 – i.e., on the gas. Three seconds before the accident it was 83 miles per hour with a foot still on the gas pedal. Two seconds before the crash, the defendant removed his foot from the throttle. An expert agreed that the defendant's vehicle was two football fields away when the victim started making the turn and that it was reasonable to believe there was enough time to make the turn. The area in question was mixed with residences and businesses and the road was three lanes wide in each direction.

Reed v. State, 4D17-3778 (July 10, 2019)

In an appeal from a revocation or probation, the Fourth District reversed for resentencing due to a scoresheet error. Reed was not on probation "at the time he committed the offense that was before the trial court for sentencing." "Legal status points should not be assessed unless a probationer commits an offense that results in conviction and 'the offense committed while under legal status *is before the court for sentencing*." "By contrast, community sanction points are assessed for a violation of probation itself."

The Court further found that the trial court's written findings that the defendant qualified as a Violent Felony Offender of Special Concern were sufficient. The trial court made written findings and indicated that the findings were based on

"several of the factors set forth in section 948.06(8)(e)1.a.-e. The statute required nothing more."

Bellay v. State, 4D17-3866 (July 10, 2019)

Bellay was a juvenile when he was convicted for the second-degree murder of a 14-year old girl and received a life sentence. He was resentenced after Miller v. Alabama and again sentenced to life, with the trial court concluding that he was "the rare juvenile offender who exhibits such permanent incorrigibility and irreparable corruption that rehabilitation is impossible and a life sentence without meaningful parole is justified." On appeal from that sentence he argued that the sentence was unconstitutional because the evidence did not establish permanent incorrigibility. The Fourth District affirmed the sentence.

The Court first rejected Bellay's argument that the trial court had to determine whether, based on prison performance, the defendant had been rehabilitated and was reasonably believed to be ready to reenter society. That standard was applicable to the 25-year judicial review proceeding, not to a resentencing proceeding. For the resentencing, performance in prison was one factor to be considered under the "possibility of rehabilitating the defendant," and it was not a dispositive factor.

The trial court made findings that the defendant's character and propensity for violence was fixed and therefore gave little weight to evidence of rehabilitation, characterizing it as an ability to behave properly in a closely controlled setting. Some of the court's statements regarding demonstrated maturity and rehabilitation were not supported by evidence, but the error was deemed harmless as the court considered all relevant factors before determining that the life sentence was appropriate.

The Court also rejected an argument that resentencing should have been under the 1983 sentencing guidelines, as the Florida Supreme Court has held that the remedy for the original violation of Miller is to apply the 2014 juvenile sentencing statutes.

Dawson v. State, 4D18-1586 (July 10, 2019)

Dawson appealed convictions for trafficking in oxycodone and possession of cocaine. The Fourth District reversed because "multiple references to collateral crimes evidence deprived him of a fair trial."

Officers were conducting surveillance when they observed someone enter the vehicle in which the defendant was sitting in the driver's seat. The officers approached the vehicle and observed the defendant with a prescription pill bottle on his lap. The passenger had exited the vehicle by that time. A search of the vehicle yielded a baggie with cocaine and others with oxycodone. Dawson denied knowledge of the drugs, cash or cell phones that were found. While he owned the car, he said he let others use it. The passenger denied observing any prescription pill bottle on the defendant's lap when the officers approached the vehicle.

The house under surveillance was the defendant's and a search warrant had been issued, and these matters were referred to by the prosecutor and witnesses. The prosecutor asked one officer "whether 'an investigation [was] commenced which ultimately led to a lawful search of Mr. Dawson's residence?'" Another officer stated that he was dispatched "to assist in the execution of a narcotics search warrant." A SWAT officer "testified that he and his team were waiting nearby to execute the search warrant and 'got the signal to move in when the defendant had arrived [and] we proceeded to the target.'"

None of these matters were necessary to show any context of sequence of events leading up to the arrest. "The State could have simply informed the jury that officers were executing a search warrant when they observed Defendant in the driveway of the adjacent house."

Goldsmith v. State, 4D18-3446, 4D19-792 (July 10, 2019)

For Rule 3.800(a) motions to correct sentences, "if the trial court could have imposed the same sentence using a correct scoresheet, any error was harmless."

Fifth District Court of Appeal

Borrico v. State, 5D17-4114 (July 12, 2019)

Borrico appealed convictions for trespassing on a construction site and resisting an officer with violence. The Fifth District found the evidence sufficient for resisting an officer but insufficient as to trespass.

Borrico was hanging around a construction site and had obtained permission to use the portable restroom. When workers complained about his aggressive behavior, that permission was revoked and, several days prior to the arrest, law enforcement was called to remove him from the site. On the day of the charges at

issue, a worker complained that Borrico would not let him empty a dumpster and engaged threatening conduct. Law enforcement was called and arrived while Borrico was using the portable restroom.

The State's evidence failed to prove that the required signage under the statute for trespass on a construction site had been in place. The State, at the time of the motion for judgment of acquittal, was permitted to reopen its case for this purpose. While there was testimony as to signs, the "State failed to elicit any testimony regarding the distance between the signs, the location of the signs in relation to the boundaries and corners of the property, the height of the lettering on the signs, or whether the signs were clearly noticeable from the boundary line."

Wilson v. State, 5D18-26 (July 12, 2019)

In a prior appeal from the denial of a motion to withdraw plea, the Court reversed for resentencing while the defendant was present. At the resentencing, he was present, but was denied leave to testify and present witnesses. "'[P]resence' includes both physical attendance and 'a meaningful opportunity to be heard through counsel on the issues being discussed.' . . . This includes the right to present evidence relevant to the sentence."

The Fifth District reversed and remanded for a de novo resentencing hearing.

Talpa v. State, 5D18-568 (July 12, 2019)

The county court certified a question of great public importance. After accepting jurisdiction, the Fifth District declined to accept the appeal and transferred it to the Fifth Judicial Circuit. The question at issue was:

> WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF, OR ENTERED A NO CONTEST PLEA TO A CHARGE OF CONTRACTING WITHOUT A LICENSE (489.127(1)(F) FLA. STAT.), IS THE MEASURE OF RESTITUTION DUE TO THE VICTIM DISGORGEMENT OF ALL MONIES PAID TO THE DEFENDANT BY THE VICTIM WITHOUT REGARD TO ANY VALUE THE GOODS OR SERVICES SO PROVIDED MAY HAVE?

Tate v. State, 5D18-695 (July 12, 2019)

The Fifth District reiterated its prior holding that the 2017 amendment to the burden of proof under the Stand Your Ground law applied retroactively and again certified conflict with decisions of the Third and Fourth Districts.

State v. Teague, 5D18-904 (July 12, 2019)

"'Section 316.1935(6) expressly prohibits the court from withholding adjudication of guilt for any violation of section 316.1935 [fleeing and eluding an officer]."

Simpson v. State, 5D18-1104 (July 12, 2019)

The Fifth District reversed a conviction for aggravated battery with great bodily harm for refusing "to allow defense counsel to question potential jurors as to their understanding and opinions regarding battered-spouse syndrome, which was the theme underlying [Simpson's] theory of self-defense." During the trial, a defense expert testified that Simpson suffered from the syndrome at the time of the shooting and another opined that she "would have felt a heightened sense of being threatened."

"Battered-spouse syndrome was at the heart of Simpson's defense, and because the trial court did not permit her attorney to inquire into possible juror bias on that issue, we are compelled to reverse Simpson's conviction. . . ."

J.P.S. v. State, 5D18-2663 (July 12, 2019)

The juvenile was placed on probation until he turned 19 and he argued that the term was excessive because it extended beyond the three-year maximum period set forth in s. 985.475(2)(e), Florida Statutes. The Fifth District agreed.

"Section 985.475(2)(e) limits community supervision to a period of up to three years. Section 985.0301(5)(c) permits the retention of jurisdiction over a juvenile until the age of twenty-one for the purpose of allowing the juvenile to complete treatment."

State v. Willis, 5D18-2766 (July 12, 2019)

The Fifth District reversed a suppression order and found that there was reasonable suspicion for an investigative stop.

Willis was observed at a christening ceremony, for which he was not a party, sitting alone at the back of the church, wearing a bulletproof vest over his clothing. Officers responded to a 911 call. After Willis was pointed out, an officer approached him, and Willis got up and exited. The officer followed him, inquiring whether he was alright and what the vest was for. Willis responded that he "was okay and he wore the vest for protection." He continued walking away from the officer.

The officer was concerned about Willis' mental capacity and was considering a Baker Act proceeding. The officer was also concerned because of the church gathering. The answers that Willis provided to questions did not make any sense and did not alleviate concerns about why he was wearing the vest. After producing his social security card as identification when asked for ID, Willis said that he wore the vest because he thought he was being followed and that he had been coming to church with it on a daily basis.

The officer asked Willis to stay where he was while the officer went to speak to the 911 caller. Although Willis was not handcuffed, the officer stated that when she left Willis, he was not free to leave. During follow up questioning by two other officers, one asked if Willis had anything in his pockets and that when approaching Willis "he observed a large bulge in Willis' front left pocket," which the officer believed was a gun. Given the time of year and the heat, and "this day and age," wearing a vest was not normal in public. The officer then grabbed Willis' wrist and said that he was not going to search him; he only wanted to pat him down for safety. Yet another officer also approached and observed a large bulge in the pocket and did not believe permission was required for a pat-down in light of what had been observed. When grabbing the wrist the officer observed the hammer and grip of a gun and Willis was then handcuffed.

The Fifth District agreed with the trial court that what started out as a consensual encounter did become a stop and seizure under the Fourth Amendment. However, reasonable suspicion existed by that time. The trial court had found that there was no testimony that the officer observed a bulge "that would lead her to have further concerns that a crime had occurred or was about to occur." Those findings were directly contrary to the testimony at the hearing.

"The basis for the investigatory stop was that Willis was wearing a bulletproof vest while observing a private christening. The attendees did not know Willis nor had they seen him at the church previously. Willis was sitting at the back of the church by himself, and those inside the church were aware of church shootings occurring across the United States and the world. Upon noticing law enforcement, Willis began to walk the other direction and exited the building. These facts provided law enforcement with reasonable suspicion to conduct an investigatory stop." The Court quoted from a New York appellate court decision: the wearing of a bulletproof vest "demonstrates its owner's readiness and willingness to use a deadly weapon."

S.C.B. v. State, 5D18-2859 (July 12, 2019)

S.C.B. was adjudicated delinquent of dealing or trafficking in stolen property and seven other charges. As part of a plea agreement, however, that charge had been nolle prossed. DJJ, when it prepared its predisposition report, based its recommendation on its belief that that was one of the charges on which the guilty plea was based.

The Fifth District reversed and remanded for a new disposition hearing based on a new PDR. The trial court did not state that it would have imposed the same disposition but for this error. The error existed as to the only second-degree felony originally charged; other charges were third-degree felonies or misdemeanors.

Norris v. State, 5D19-326 (July 12, 2019)

The Fifth District agreed with the postconviction trial court that Norris appeared "to be entitled to credit against his sentence for time spent at liberty when he was prematurely released from prison through no fault of his own." However, it was "up to the Department of Corrections to afford Norris that credit," and that had to be done through administrative remedies against DOC, not through the court which convicted and sentenced Norris as part of the postconviction criminal case process.