Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Brown and United States v. Antico, 18-10772, 18-10972 (Aug. 14, 2019)

The primary issues on appeal were the sufficiency of evidence for Brown's conviction for deprivation of rights under color of law, and Antico's conviction for obstruction of justice. The offenses involved police brutality and a subsequent coverup. The government cross-appealed as to the sentences.

As to Brown, the Court first concluded that Brown's use of force was objectively unreasonable. The evidence must be viewed from the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." When offenses committed by suspects are more serious, more force is appropriate on the part of officers.

Brown "repeatedly struck, kicked, and twice used a Taser against J.B." The "only circumstance justifying his use of force was J.B.'s failure to comply with loud verbal commands – either to exit the vehicle or to place his hands on the dashboard. But a reasonable jury could have found that Brown either did not give any verbal commands to J.B. or that he did not give J.B. the opportunity to comply with h is commands before using severe force. J.B. was charged with resisting arrest without violence. This is not a serious crime for which severe force is warranted." J.B. had been a mere passenger in a vehicle that was related to "the high-speed chase for using the suspect vehicle to hit a police officer."

Additionally, Brown's use of excessive force was "willful," a finding of which may be based on conduct "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite." There was testimony that Brown's actions "clearly violated the department's policies on the use of force," and Brown had been "recently trained on the use of force five months before the incident." The jury could therefore conclude that Brown "lacked the authority to repeatedly punch and kick a passenger who presented at most passive resistance." The jury's conclusion was also supported by the filing of police reports "that sought to cover up his actions." The initial report, hours after the incident,

"omitted that he kicked and punched J.B. before using the Taser." Brown admitted this only after it was discovered on helicopter video.

Antico's obstruction of justice was based on "repeated statements falsely couching for the credibility of his officers and stating that he had never had an issue with 'these guys not being accurate' in their offense reports; "his omission of the fact that several of his subordinates' officer reports that were submitted and validated as complete did not accurately reflect the force they used against J.B. and B.H."; and "Antico's omission of the fact that he returned eleven officer reports over a span of 29 hours so that his subordinates could change them to be consistent with the video."

This evidence sufficed to support a finding that there was "an intentional effort to mislead." There was also sufficient evidence to support a finding that "an officer in Antico's position would be unlikely to forget the shortcomings in his subordinates' initial officer reports." This was based on testimony regarding training and the prospect of disciplinary proceedings for such omissions.

An argument by Antico that a modified Allen charge was "unduly coercive because it mentions that another trial will 'serve to increase the costs to both sides'" was found to be "invited error." Antico was the first party to propose the modified instruction.

The district court did not err in denying a post-verdict motion to interview a juror regarding alleged jury misconduct. The juror alleged that some jurors relied on "their prior misconceptions about police officers and their feeling of someone needing to be held accountable, where there wasn't one bit of evidence showing [that Antico] was guilty." Allegations calling into question a juror's objectivity are "'internal matters' that are inadmissible under Rule 606(b)," which governs post-verdict inquiries into the validity of a verdict "or any juror's mental processes concerning the verdict." There were also allegations that holdout jurors were "bullied" and that one had a "crush" on Antico. Bullying was deemed "'nothing more than [a] typical feature[] of jury deliberations.'"

On the government's appeal of the sentences, the Court reversed as to both defendants because it was "unclear whether, in calculating their guideline ranges, the district court made a factual finding infected by legal error." The district court declined to use an aggravated assault "as the underlying offense in calculating" the guideline ranges. This would affect the base level of the offense under the guidelines. The district court found that Brown's use of a Taser "did not amount to aggravated assault because there was '[s]ome evidence' suggesting that Brown used

the Taser 'to gain compliance rather than to cause bodily injury.'" The government argued that a Taser was "'designed' to inflict bodily harm." The Eleventh Circuit disagreed with this as the district court could have found that the assault ended with the punches and kicks and that the Taser was then used legitimately to gain control.

The Court accepted the government's argument that Brown could have intended to both bring J.B. under control and cause bodily injury. And, the district court mischaracterized the relevant issue by viewing this as a "single-intent" question rather than alternative intent issue, as Brown could have more than one intent. It was "legal error to conclude that the presence of some evidence of an intent to control necessarily excludes the possibility that a defendant also acted with the intent to injury."

First District Court of Appeal

Smiley v. State, 1D18-1792 (Aug. 16, 2019)

The trial court did not err in denying a motion to suppress statements recorded on the victim's cell phone. Smiley argued that "he had a reasonable expectation of privacy in statements he made as a guest in the victim's home, and his knowledge of the recording did not defeat that expectation."

While Smiley was visiting the victim, the mother of his young child, there was an altercation, and the victim started recording the argument in a video on her cell phone. The Court rejected Smiley's arguments, upholding the trial court's conclusion that "Smiley did not have a subjective expectation of privacy in his statements when he saw the cell phone in the victim's hand and knew that he was being recorded. The cell phone recording shows Smiley trying to snatch the phone from the victim's hand, and Smiley is heard making statements suggesting that he knew that he was being recorded."

And, even if Smiley did have a subjective expectation that the statements he made were private, the statements "would not qualify as 'oral communications' protected under the wiretap law because any expectation of privacy under the circumstances of this case is not one society recognizes as reasonable." While "Smiley may have been invited to the victim's home as a guest initially, during the argument the victim demanded that Smiley get out of her house no less than nine times. At that point, Smiley's expectation of privacy, if any, was no longer reasonable or justified."

Wright v. State, 1D18-1956 (Aug. 16, 2019)

Wright appealed convictions for burglary, criminal mischief and aggravated assault. The First District affirmed and disagreed with his argument that the trial court "abused its discretion by instructing the jury to disregard his testimony."

During cross-examination, Wright was instructed four times "to stop interrupting and posing questions to the prosecutor." He still persisted, and when the court told him to be quiet, he stated that his life was on the line and that this was not a burglary. After more conduct like this by Wright, the judge "instructed the jury to disregard his comments, and explained that every witness has to be subject to cross-examination and the State was entitled to answers to its questions." There was a further warning hat if Wright did not properly answer the questions, the jury would be instructed to disregard his testimony.

More interruptions by Wright persisted, with more statements to the effect that his life was at stake and that this was not a burglary. The court again addressed Wright and gave a further admonition, with Wright indicating that he understood and would answer the prosecutor's questions. When cross-examination resumed, Wright quickly interrupted the prosecutor's question and started interjecting comments when no questions were pending. The jury was ultimately directed "to disregard his testimony and 'consider [they] did not hear anything he said.'"

Wright argued that while striking testimony is permissible when a defendant refuses to answer questions on cross-examination, he did answer numerous questions. The First District found that Wright "effectively refused to answer the State's questions because his behavior precluded the State from proceeding with its cross-examination and posing further questions. Appellant prevented the State from fully testing his credibility and the truth of his testimony on direct examination, thereby frustrating the purpose of cross-examination." The trial court started with lesser sanctions and gave multiple warnings prior to the ultimate sanction of striking Wright's entire testimony.

Ansley v. State, 1D18-2019 (Aug. 16, 2019)

The First District rejected the defendant's argument that collateral offense evidence was erroneously admitted into evidence and that counsel was ineffective for failing to object to that evidence.

The defendant was charged with eight offenses against the same victim and testimony was presented as to torture inflicted on the victim over several hours. Some acts of torture were not charged as separate offenses. These uncharged crimes were inextricably intertwined with the charged crimes. And, they were also relevant to establish an element of kidnapping, which was one of the charged offenses. Proof of kidnapping includes the element of confining or imprisoning the victim with the intent to inflict bodily harm upon the victim or to terrorize the victim.

Hudson v. State, 1D17-3593 (Aug. 14, 2019)

A witness to the offense Hudson was originally charged with was deposed and murdered shortly after the deposition. Hudson, who was in jail at the time, was then charged with the first-degree murder of that individual, based on the solicitation and assistance of fellow gang members.

On appeal from the conviction for first-degree murder, Hudson argued that the evidence was insufficient. The argument raised on appeal differed from that argued in the trial court and was reviewed under the fundamental error standard. The First District affirmed.

> Here, the State presented evidence in the form of jailhouse phone recordings that Hudson was in frequent direct and indirect contact with fellow gang members complaining about how the victim's testimony was likely to result in Hudson's conviction and how his fellow gang members were doing nothing to "handle" the situation, alternatively pleading and insisting that the victim be "handled" and telling the gang's leader that he would not mind if the victim failed to testify. In one instance, the gang leader promised to "go by [the victim's] house tonight." The State also presented evidence that Hudson either directly or indirectly furnished the gang with the victim's address. Finally, the evidence showed that Hudson was informed of the victim's death very shortly after it happened and expressed his relief that it meant he'd be going home.

Mackey v. State, 1D17-4086 (Aug. 14, 2019)

Mackey appealed his conviction for the second-degree murder of his ex-wife. The appellate court concluded that the evidence was sufficient, even if viewed under the circumstantial evidence standard.

Mackey was obsessed with the victim "and provided her a home in hopes she would continue to have sexual elations with him." When she planned on moving out, he left Missouri, where he had been visiting family, returned to Florida and engaged in efforts to convince her to stay in the home he provided her. Communications between the victim and others would support a conclusion by the jury that she did not want an intimate relationship with the defendant. When the defendant learned of the victim's sexual encounter with another man, he became jealous and angry, making threatening comments to her before shooting her in the head with a single shot. He then wrapped the body in a sleeping bag, removed a bloody pillow case from the house, as well as the victim's dog, and fled to Missouri. He left the victim's cell phone and car at the home. He also removed the body and took it to Missouri.

In one of the statements the defendant gave to the police, he stated that he had been angry because of the victim's sexual encounter with another; that the victim grabbed a handgun he bought for her and she pointed it at him; that she put it down; and that he then picked it up and it went off accidentally. He admitted wrapping the body and removing it and not telling another ex-wife in Missouri or his son in Missouri anything about it. Medical testimony was that the fatal wound was likely a "contact wound." The absence of stippling "demonstrated that the gun barrel was in direct contact with the victim." Presence of soot in the victim's brain led to the same conclusion. The medical examiner ruled out the possibility of the wound being "near-contact," "close-range," or "intermediate-range."

A video of the exhumation of the body in Missouri was properly admitted as it "could have helped the jury determine whether to believe Appellant's story or the medical examiner's theory, as the video showed how Appellant attempted to hide the body." Additionally, the test for admissibility is relevancy, not necessity.

Graham v. State, 1D18-2664 (Aug. 14, 2019)

Graham was convicted of armed burglary and attempted armed robbery, for offenses committed in 2003 when he was 16. He was sentenced in 2013 to a term of 25 years in prison. After Graham v. Florida, he was resentenced in 2017 to the

same 25 years, but was granted judicial review of the sentence after 20 years under the 2014 sentencing laws. This appeal was from that sentence, and Graham argued that the current sentence was illegal because the "new juvenile sentencing laws violate equal protection because under the plain language of the laws, a juvenile homicide offender may receive a sentence review sooner than a juvenile nonhomicide offender." The First District disagreed.

Under the 2014 sentencing laws, capital homicides are entitled to judicial sentencing review after 25 years if the defendant killed, intended to kill, or attempted to kill; the judicial review is after 15 years otherwise. For nonhomicide offenses that are either life felonies or punishable by life, if the sentence is 20 years or more, the judicial review is after 20 years, and there is eligibility for a second judicial review after 10 years.

For equal protection analysis, the Court found that the distinctions between homicide and nonhomicide offenses had a "rational relationship to the legitimate government objectives" involved in satisfying the mandates of Graham v. Florida, Miller v. Alabama, and other relevant Florida Supreme Court decisions. "There is a plausible reason for distinguishing between juvenile nonhomicide offenders and juvenile homicide offenders who did not kill, intend to kill, or attempt to kill: the lack of intent to kill makes the latter category of juveniles less culpable and therefore more susceptible to rehabilitation than those juvenile nonhomicide offenders who had criminal intent but whose offense did not involve a death. It is rational to distinguish between a juvenile convicted of a homicide offense but who had no knowledge or intent to cause death, such as the getaway driver of a robbery leading to death but who had no knowledge that this codefendant carried a weapon, and a juvenile convicted of a serious nonhomicide offense such as attempted armed robbery like Graham who knowingly accompanied his armed accomplice into the restaurant to rob the victim." The distinctive treatment was further based not only on the seriousness of the offense, but on the offender and the offender's intent.

The Court also rejected an "as-applied" challenge of unconstitutionality. "Section 775.082 does not treat him differently from similarly-situated persons. He was convicted of a first-degree felony punishable by life, and his crime caused no death. The statute treats all juvenile offenders who commit first-degree felony offenses punishable by life that do not cause death the same – if they are sentenced to twenty years or more, then they are entitled to a review of their sentence after twenty years, and with a second review after ten years."

Davis v. State, 1D17-4366 (Aug. 13, 2019)

Davis appealed multiple convictions related to an altercation with neighbors over his missing dogs.

The trial court failed to make the required determination that competency was restored prior to conducting the trial. Davis was initially found to be incompetent. Competency was subsequently restored and the court made a determination of that based on the psychologist's report. However, one month later, the court appointed another psychologist to evaluate Davis. Although that report concluded Davis was competent, the trial court did not make another determination of competency before proceeding to trial. The trial court can make a nunc pro tunc determination of competency if possible.

Additionally, the minimum mandatory sentence that had been imposed for attempted first-degree premeditated murder under the 10-20-Life statute, was reversed because the "allegations in the charging document were not sufficient to place [the defendant] on notice that he was subject to an enhanced sentence under section 775.087(2)(a)3., Florida Statutes. . . ."

Marshall v. State, 1D18-1690 (Aug. 13, 2019)

The First District affirmed the denial of a Rule 3.850 motion and addressed the claim that counsel was ineffective in advising Marshall on the decision not to testify in his own defense.

The Court noted the trial court colloquy in which Marshall stated that it was his own decision, and that "no one had threatened or coerced him to influence his decision." He also expressed awareness that only a single witness would be testifying in his case.

Marshall argued further that counsel misadvised him as to whether testimony regarding his prior convictions would come in as a result of the one defense witness's testimony. The defense theory was that that witness, Burrows, had been a codefendant of Marshall's in an earlier case, and that the victim of the current case "fabricated the robbery [of the instant case] to seek revenge against Marshall for testifying against the victim's friend, Tim Burrows," in the prior case. Prior to Burrows' testimony, the judge had limited the State's cross-examination of Burrows to questions about his own prior convictions, not Marshall's.

Regardless of whether trial counsel gave any misadvice regarding Burrows' testimony opening the door to testimony about Marshall's prior convictions, as Marshall had convictions for two prior robberies, his own testimony would have opened the door to impeachment with his own prior convictions. And, Marshall's own proffered testimony would not have affected the outcome of the case. He "alleged that he could have testified that he stole a gun from the victim, not money, and only because the victim had refused to pay back a loan. This would not provide a defense to robbery. A claim of right defense does not apply to robbery charges arising from the use of force to take property from the victim to satisfy a disputed debt."

Abruscato v. State, 1D18-4316 (April 13, 2019)

"'[W]hen section 921.024(2) [Fla. Stat.] applies so that the statutory maximum as provided in section 775.082[] is exceeded by the lowest permissible sentence under the code, the lowest permissible sentence under the code becomes the maximum sentence which the trial judge can impose.'"

Savell v. State, 1D19-0136 (Aug. 13, 2019)

At a pretrial hearing on a motion to dismiss, Savell sought to have "several witnesses testify about the contents of a video from her home security system that she claimed was unrecoverable." She argued this testimony would provide evidence of justification for her discharge of her firearm. The trial court sustained the State's objection based on the Best Evidence Rule.

Savell challenged that ruling in a pretrial prohibition petition, which the First District denied because there was no proffer of the excluded testimony. "Only a small portion of what might have been said was presented to the court. We cannot consider the admissibility of excluded testimony which is not present in the record."

Second District Court of Appeal

Barrientos v. State, 2D14-5870 (Aug. 16, 2019)

The Second District affirmed convictions for first-degree murder and armed robbery. Barrientos argued that his second statement to police should have been suppressed because it was a custodial interrogation without Miranda warnings. The Second District disagreed, finding that Barrientos was not in custody at the time. Barrientos "voluntarily came to the police station to provide information about his

crimes. He was not summoned for questioning. Even though Barrientos implicated himself in very serious criminal conduct, the police did not know whether his story was true until they investigated Barrientos' claims. Without confirmation that a man was actually dead, much less that he had been murdered, Barrientos could not have been considered a suspect in that murder. Moreover, Barrientos was not confronted with evidence of his guilt – the police did not yet have such evidence." Barrientos was a juvenile at the time, and his mother consented to the detectives speaking to him. The Court noted other relevant factors – Barrientos was largely speaking in narrative form; there was no pressure or coercion; his movement was not restricted; he was not handcuffed; he was free to leave.

After the second interview, the police conducted an investigation, while Barrientos and his family waited, at their own agreement, at the police station. After that investigation, a third interview proceeded and Barrientos was given his warnings at that time. The Court rejected the argument that this was insufficient because of a deliberate delay in giving the warnings.

State v. Monroe, 2D18-1060 (Aug. 16, 2019)

The Second District reversed the trial court's order suppressing Monroe's statements to law enforcement. The trial court "concluded that Monroe's waiver of his Miranda rights was not knowing and voluntary because he asked a clear question and the interviewing detective did not answer it in good faith." The Second District held that that conclusion was not supported by the evidence.

As a preliminary matter, the Court held that the standard deferential standard that applies when reviewing a trial court's findings was not applicable where, as here, the appellate court had access to the same videotape of the interview that the trial court had and was in the same position to review it as was the trial court.

During the interview, Monroe asked: "[W[hen you're . . . appointed, uh, an attorney, like, isn't that when you be – being charged? When you appointed attorney?" The Court explained the detective's response:

> Interpreting this as a question about Monroe's right to an attorney, Detective Blair attempted to answer the question he believed Monroe was asking. When Monroe pointed out that the detective had not answered his question, the detective made another attempt to understand the question and answer it. Monroe confirmed that he was asking

> whether the Miranda warnings regarding appointment of counsel meant that he was getting charged. Detective Blair accurately explained that the warnings did not necessarily mean that he was getting charged with anything but rather that the detectives were asking permission to talk to him. This time, Monroe appeared to be satisfied with the answer and did not ask for any more clarification. This is not a case where the detective overrode or steamrolled the suspect. Detective Blair did not ignore Monroe's concern or give him evasive answers.

The transcript of the actual questions and answers follows:

> [Monroe]: Um, when you're opponent – appointed, uh, an attorney, like, isn't that when you be - being charged? When you appointed attorney?
>
> Detective: Well normally, appointing an attorney means if you can't afford one. Like if you have something in the court system and you can't afford the attorney, then the courts would appoint you one. That's what that means. So if you said I don't have the money to pay for an attorney, because normally you would pay for an attorney, then the courts would appoint you one. Does that make – does that answer your question?
>
> Monroe: I mean, it doesn't but –
>
> Detective: Well, here, maybe this better answers it. You're asking, doesn't that mean I'm getting – that something about a charge?
>
> Monroe: Yeah.

Barnett v. State, 2D17-379 (Aug. 14, 2019)

Convictions for first-degree felony murder, with the predicate felony of resisting an officer with violence, and aggravated battery on a law enforcement officer resulted in a double jeopardy violation under the merger doctrine.

Barnett's argument was based, in part, on Martin v. State, 342 So. 2d 501, 503 (Fla. 1977), which held that the trial court may not instruct the jury on nonhomicide lesser included offenses because "where a homicide has taken place, the proper jury instructions are restricted to all degrees of murder, manslaughter, and justifiable and excusable homicide." That argument was rejected because Barnett was charged with aggravated matter on a law enforcement officer in addition to the felony murder charge.

However, in Mills v. State, 476 S. 2d 172, 177 (Fla. 1985), the Court held that it did "not believe it proper to convict a person for aggravated battery and simultaneously for homicide was a result of one [gunshot] blast" and thus "[i]n [that] limited context the felonious conduct merged into the criminal act."

Morejon-Medina v. State, 2D18-3539 (Aug. 14, 2019)

Addressing a petition alleging ineffective assistance of appellate counsel, although the Court declined to find prior appellate counsel deficient, the Court concluded that dual convictions violated double jeopardy under State v. Shelley, 176 So. 2d 914 (Fla. 2015), and reversed one of the convictions. The State argued that Shelley was distinguishable, because the two charges – solicitation and traveling after solicitation, both were alleged to have occurred on the same date, while the charges in the instant case were alleged to have occurred on two dates.

Although the evidence supported the State's contention, the Florida Supreme Court's recent decision in Lee v. State, 258 So. 3d 1297 (Fla. 2018), limited the Court's review to the allegations in the information. As the information did not "make clear that the solicitation charge is separate and distinct from the solicitation underlying the travel charge," Lee mandated reversal of one of the convictions.

Rogers v. State, 2D18-3799 (Aug. 14, 2019)

Rogers appealed the denial of an amended postconviction motion from county court to circuit court. The circuit court, in its appellate capacity, ordered Rogers, appearing pro se, to pay a "preparation fee" of $925 within 10 days or to otherwise establish a payment plan, or file for a determination of indigent status. The order noted that the failure to take action within 10 days would result in dismissal of the appeal. Although the order states that a copy was sent to Rogers, he alleged that he never received a copy. The circuit court ended up dismissing the appeal about 30 days after the deadline for complying with the 10-day order. Rogers sought certiorari review of the dismissal of the appeal.

The Second District granted the petition and found that the sanction of dismissal was erroneous. First, nothing suggested that the failure to comply "was flagrant, repeated, or represented a contumacious disregard of the court's order." Second, although the 10-day order was signed on July 11th, it was not filed until about one month later, with two clerk's office date stamps – August 10th and August 13th – and, under one of those, the 10 days would not have even expired as of the date of dismissal.

Third District Court of Appeal

Lopez-Macaya v. State, 3D18-545 (Aug. 14, 2019)

The Third District rejected a claim of fundamental error for an alleged failure of the trial court to reduce a conviction for domestic battery by strangulation to simple battery due to the alleged insufficient evidence of great bodily harm or risk thereof. The defendant held a knife to the victim's throat and threatened to kill her; he subsequently dragged her by her hair onto her bed, got on top of her and strangled her with his hands around her neck. The victim could not breathe. The defendant continued to make threats to kill her. The victim briefly escaped and dialed 911, but the defendant apprehended her again and continued the assault, choking the victim again and poking her in the stomach with a knife.

The offense of domestic battery by strangulation did not require proof of great bodily harm; only that the actions created a risk of such harm.

Smith v. State, 3D18-2319 (Aug. 14, 2019)

"It is well-established that where the trial court denies a timely rule 3.850 motion as 'insufficient on its face, the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion.'"

Fourth District Court of Appeal

Wiley v. State, 4D19-587 (Aug. 14, 2019)

On appeal from the denial of a motion to correct illegal sentence, the Fourth District held that the trial court erred in reclassifying his conviction for third-degree murder from a second-degree felony to a fist-degree felony under section 775.087(1), Florida Statutes. "Because the conviction was predicated on the

underlying felonies of aggravated assault with a deadly weapon and aggravated battery with a deadly weapon, the use of a weapon was an essential element of the offense and, as a result, the offense was not subject to reclassification" Additionally, because the "third-degree murder conviction was not properly reclassified to a first-degree felony under section 775.087(1), his life sentence was not authorized under the habitual felony offender statute." The maximum sentence for a second-degree felony under the habitual felony offender statute was 30 years.

Cruz v. State, 4D19-1321 (Aug. 14, 2019)

The Court denied a certiorari petition seeking review of an order denying a "motion to prevent disclosure of the names of experts who may have visited" Cruz in jail. Cruz "failed to overcome that the jail's visitor logs are public records with no statutory exemption for the experts' names within those logs." The experts in question were mental health experts who may have visited Cruz in jail in connection with his defense.

Hernandez v. State, 4D19-1413, 4D19-1428 (Aug. 14, 2019)

The Fourth District granted mandamus petitions from two defendants to "compel the trial court to accept their written waivers of appearance for calendar call hearings." The Court granted "the petitions because the trial court did not specifically articulate why their presence was mandatory or what value would occur by requiring their appearances."

Fla.R.Crim.P. 3.180(a)(3) provides that the "defendant shall be present [for pretrial conferences] unless the defendant waives this in writing." Case law permits the trial court to require personal presence for a "good reason." In this case, the trial court's order came after multiple pretrial conferences at which the defendants had not personally appeared.

In one of the cases, there was "nothing in the record to suggest that requiring his presence would have resulted in the case being resolved, or that there was even a plea offer extended from the State." In the second case, there "was no indication of what value would occur by requiring that Hernandez appear in court."