Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Stahlman, 17-14387, 18-12866 (Aug. 19, 2019)

Stahlman appealed his conviction and sentence for attempting to entice a minor to engage in sexual activity.

The district court did not err in excluding proffered testimony from a defense expert as the methodology of the expert was deemed unreliable and the testimony would not assist the trier of the fact. Stahlman sought to present testimony from Dr. Carr that "'[t]here [was] insufficient behavioral evidence to conclude that Mr. Stahlman intended to have real sex with a minor, rather than act out a fantasy involving adults,' and that '[t]he clinical evidence suggests that Mr. Stahlman intended to act out a fantasy, rather than have sexual contact with a minor.'" "These statements plainly run afoul of Rule 70b(b)'s directive that an expert not opine on whether a criminal defendant had or did not have the requisite mental state to commit the charged crime."

Stahlman also challenged the district court's admission of lay opinions from a government witness, Agent Hyre, regarding: "(1) the age of the girl in the picture Stahlman posted with his Craigslist ad; (2) what Craigslist is used for; (3) whether Stahlman's ad would be 'flagged'; (4) what Stahlman meant in the ad; (5) Hyre's interpretation of the email communications between Hyre and Stahlman; and (6) what he though Stahlman meant in those communications." Stahlman argued that these all required testimony from a qualified expert.

The district court was found to have erred in its legal analysis. That court found that there was "specialized knowledge within the scope of this testimony." However, Rule 701(c), "addressing lay opinion testimony, makes quite clear that a lay witness's opinions must "not [be] based on scientific, technical, or other specialized knowledge within the scope of Rule 702.'" The errors were deemed harmless, however. And, some of the items did qualify as proper subjects for lay opinion testimony. This included: (1) testimony that the section of Craigslist which Stahlman used to post his ad was "'used as kind of like a hookup site'"; (2) testimony "regarding what posts would be 'flagged' on Craiglsit and interpreting what

Stahlman meant in his ad and in his email communication'" (this was based on the agent's "perceptions as a participant in his conversations with Stahlman in this case and informed by his years of experience investigating child exploitation and child pornography crimes").

Stahlman also challenged the sufficiency of the evidence to prove intent (or that he "took a substantial step toward carrying out that intent."). The Eleventh Circuit disagreed. Testimony included a month's worth of phone calls between Stahlman and the man he believed to be the father of an 11-year old girl, "during which he discussed in graphic detail plans to meet and engage in sexual activity with the daughter." Stahlman "asked Agent Hyre what he would have to do to 'qualify' for the opportunity to meet the daughter, asked questions about what types of sex acts Agent Hyre would or would not consent to, and asked Agent Hyre what the daughter would enjoy." Stahlman further argued that there was an innocent explanation – he thought he was conversing with an "adult couple as part of a fantasy role-playing scenario." The "jury was not required to accept this innocent explanation. Indeed, because Stahlman testified in his own defense at trial, the jury was free to (and, based on their verdict, clearly did) disbelieve his testimony and consider it as substantive evidence of his guilt."

Finally, the district court did not err in applying the obstruction-of-justice sentencing enhancement based on findings of perjury by Stahlman. This included his "testimony about his lack of sexual interest in children."

The Court also briefly addressed a Brady claim raised in a motion for new trial, and found that even if evidence about Agent Hyre's "prior discipline does carry some impeachment value, we see no reasonable probability that, had this evidence been disclosed, the outcome of Stahlman's trial would have been different." For essentially the same reason, the Court declined to reverse the conviction based on a discovery violation under Rule 16; a reversal must be based upon a demonstration by the defendant "that the violation prejudiced his substantial rights." The testimony at issue was deemed "at best, merely impeaching evidence"; there was "ample evidence supporting Stahlman's guilt"; and this evidence would not "probably produce a different outcome."

United States v. Hawkins and McCree, 17-11560 (Aug. 20, 2019)

The defendants appealed convictions for conspiring to distribute cocaine and related offenses.

The Eleventh Circuit reversed most of the convictions because testimony admitted from Agent Russell, upon which the reversed counts relied extensively, constituted plain error. The agent "repeatedly provided 'speculative interpretive commentary' on the meanings of phone calls and text messages and gave his opinions about what was occurring during and in between those communications."

The testimony in question "'went beyond interpreting code words to interpret conversations as a whole.'" The agent "'interpreted' unambiguous language, mixed expert opinion with fact testimony, and synthesized the trial evidence for the jury. His testimony strayed into speculation and unfettered, wholesale interpretation of the evidence." The prosecutor had tendered the agent as an expert regarding cocaine investigations, but argued alternatively that his opinion testimony would be admissible as lay opinion testimony.

While the testimony started out with permissible expert opinions as to "how cocaine is 'cooked' and the use of 'cutting agents,'" and explanations of code words, it then ventured into impermissible areas: "For example, Agent Russell opined that when Hawkins told Ware, 'Don't let this get away, man,' this meant: 'Evidently, Mr. Hawkins thought that this was a good deal. The quality of the cocaine was good. The price was about $1,000 cheaper than what Carlos Ware was paying to Carlos Bogan at this time of the investigation.' And sometimes Agent Russell 'interpreted' plain language – stating, for example, that 'he can get as many as he wants' means that '[he] has a lot of cocaine.'"

In another example used by the Court, when asked what the phrase "making a move" meant, the agent responded: "'Trying to make a move is Carlos Ware informing Mr. Hawkins that he's getting ready to travel to Georgia to reup on his cocaine supply.'" The agent also engaged in speculation, as when he gave an opinion as to the meaning of "having something in the pot," and he responded that that "'*could be* referring to cooking the cocaine.'" He was also permitted to interpret ordinary language, not requiring assistance for the jury, as when he explained that "that's the last one" meant "he doesn't have any more dope," and "giving it to people" meant "distributing narcotics."

When asked, based on his expertise, "what's going on here," Russell was permitted to give a lengthy narrative."

The Court gave several other examples of testimony going to far, and then engaged in plain error analysis, as the testimony at issue had not been objected to on the grounds raised on appeal. The Court observed that the testimony from the agent

was problematic whether it was viewed as expert opinion testimony or lay opinion testimony.

In re: Gary Ray Bowles, 19-13149 (Aug. 22, 2019)

On the day of a scheduled execution, the Court denied an application for authorization to file a successive habeas corpus petition. The Court denied both that request and the related emergency motion to stay execution.

Bowles wanted to raise a claim that he was "intellectually disabled and thus ineligible for the death penalty." The Supreme Court decisions upon which he relied, Atkins v. Virginia, 536 U.S. 304 (2002), Moore v. Texas, 137 S.Ct. 1039 (2017) and Hall v. Florida, 572 U.S. 701 (2014), did not provide the basis for a successive petition. While Atkins was a decision that could apply retroactively to authorize a successive habeas petition, it was decided in 2002, six years prior to Bowles' first federal habeas petition.

Bowles basically argued that Atkins "was not actually 'available' to him when he filed his first habeas petition in 2008 because then-existing Florida law would have doomed his petition." However, there "is no futility exception to the AEDPA's restrictions on second and successive petitions."

More significantly, Bowles' current claim relied primarily on Hall, rather than Atkins; the Court viewed his claim as a Hall claim, regardless of Bowles' effort to call it an Atkins claim. And, Hall does not apply retroactively. Similarly, Moore has not been held to apply retroactively.

Finally, although Bowles relied on the statutory provision enabling a successive petition based on a claim actual innocence, that claim failed. He argued he was innocent of the death penalty, but the claim challenged only eligibility for the death penalty, not guilt of the underlying crime, and therefore did not fall within the statutory exception.

First District Court of Appeal

Marshall v. State, 1D17-5248 (Aug. 23, 2019)

Marshall was sentenced for multiple offenses committed at age 21, including burglary, for which he received a minimum mandatory 15-year prison sentence as a prison releasee reoffender, which meant that the entirety of the sentence would have

to be served, without any possibility of early release. He challenged the constitutionality of the sentence pursuant to Miller v. Alabama, 567 U.S. 460 (2012) and Graham v. Florida, 560 U.S. 48 (2010). The First District rejected the argument for several reasons.

First, the Court emphasized the purpose of the PRR statute in deterring recidivism. Second, the Graham and Miller decisions do not apply to offenders 18 years of age or older. Third, even if they did apply, Marshall did not receive a life sentence without the possibility of early release.

Holmes v. State, 1D18-1700 (Aug. 23, 2019)

The First District affirmed a conviction for second-degree murder and found that the evidence was sufficient. Holmes argued that the shooting was an accident and that the State failed to prove the element of a depraved mind – i.e., ill will, hatred, spite or evil intent. The Court stated:

> . . . Holmes and the victim were in a rocky relationship. Holmes was angry with the victim. The victim wanted to go home with their son and end her relationship with Holmes. Holmes admitted that he pulled out a loaded pistol and pointed it at the victim's head. That act alone is competent evidence that Holmes possessed the requisite intent to commit second-degree murder. . . .
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> Even so, the State also presented evidence that the gun was fired within three inches of the victim's head and that the gun's safety features were in working condition. . . . [Holmes'] explanation that the gun accidentally fired when the victim slapped his wrist is called into doubt by expert testimony that it would have required nine pounds of force to engage the trigger and fire the gun.

Roberts v. State, 1D18-1834 (Aug. 23, 2019)

The First District affirmed convictions for armed robbery and possession of a firearm by a convicted felon. The case involved a failed drug deal which resulted in the victim suffering a facial and Roberts and a companion taking the marijuana without paying.

Roberts argued that the State's reasons for a peremptory challenge were not genuine because the State had not applied the reasons equally to other prospective jurors who were not members of the same racial group. The Court looked at the facts surrounding the questioning of the jurors at issue and found that the ones who were not stricken were not similarly situated. The State's reasons were therefore deemed genuine.

The Court further found that there was no error in limiting cross-examination of the victim by the defense. The defense was permitted to elicit testimony showing potential bias, including the State's arrest of the victim and decision not to prosecute, along with the statement that there was no promise for anything in exchange for his testimony.

A limit on the victim testifying about the nature of the charges against the victim prevented the jury from being misled. "One of the issues disputed at trial was whether the victim was armed during the drug deal. Had the jury learned that the victim as arrested for carrying a concealed firearm, the jury may have been misled into believing that the victim's arrest five days after the robbery was evidence that he possessed a gun during the robbery. Considering the passage of time between the robbery and the victim's arrest, the trial court did not abuse its discretion. . . ."

A detective's testimony regarding his observation of the victim's wound nine days after the robbery did not constitute improper lay opinion testimony. It was limited to his "personal observations and knowledge," including the size of the wound and the size of the barrel of a shotgun.

The trial court did not err in admitting evidence of consciousness of guilt. Roberts knew a warrant was out for his arrest. When officers arrived to make the arrest and announced their presence and purpose, Roberts, instead of exiting, hid in the apartment for hours, even after officers started launching tear gas into the apartment.

The State laid a proper foundation for impeaching Roberts' companion by using her past recorded recollection. She gave a sworn statement to the prosecution 10 days after the incident and testified that he memory was better at that time than at the time of the trial; and that she was truthful at the time of the prior statement, with the exception of saying that Roberts had a shotgun on the night of the robbery.

Last, a comment by the prosecutor in closing argument – "that the jury should not place much weight on Roberts' claim about injuring his hand during the robbery

because Roberts did not mention this injury until he was arrested three weeks later" – was not improper because it was invited by defense counsel's prior argument that Roberts' testimony was believable "because it was corroborated" by testimony from two other witnesses.

Moore v. State, 1D18-2224 (Aug. 23, 2019)

The First District affirmed convictions for aggravated assault on a law enforcement officer and other offenses. The Court disagreed with Moore's argument that the trial court erred in accepting a jury verdict "where it was not clear during polling of the jury whether one of the jurors agreed with the verdict or repudiated it."

During polling of the jury, when asked if this was their "true and correct verdict," the last juror responded "reluctantly." "During the polling, the last juror's response of 'reluctantly' was not ambiguous and did not necessarily need clarification or further deliberation. The answer merely expressed some sort of reservation about the decision, but it remained an affirmative answer. She agreed that it was her verdict, which is the only requirement in rule 3.450." Although defense counsel noted that the juror was "visibly disturbed," that was not supported by the record on appeal.

Nolan v. State, 1D18-3026 (Aug. 23, 2019)

The First District affirmed convictions for armed robbery and resisting arrest without violence.

A Walmart video was admitted into evidence showing "Nolan trying to make a purchase using credit cards that were the same color as credit cards stolen from the" victim, in the parking lot outside the store where Nolan was arrested shortly after the robbery. In addition to showing the same color of the credit cards, a detective testified on the basis of the Walmart video, that Nolan was the man in the video. While such testimony is often inadmissible, the detective testified outside the presence of the jury "that he spent time with Nolan the day of the arrest and that Nolan's appearance had changed since then. Nolan's hair and facial hair were different, his complexion had changed, and he had put on weight." Under those circumstances, the detective's identification of Nolan as the man in the video was not an abuse of discretion.

The standard for a motion for new trial is whether the verdict was contrary to the weight of the evidence, not the sufficiency of evidence. When a judge uses the wrong standard, the appellate court will reverse. Here, there was no basis for reversal. Although the judge stated that the defense was making "the same arguments that were made during the course of the trial," and that the court stood by its "rulings and findings made at that time," the judge was simply responding to the arguments raised by Nolan in the motion for new trial, and those arguments "did not include that the verdict was contrary to the manifest weight of the evidence."

Brown v. State, 1D17-3453 (Aug. 22, 2019)

The First District affirmed a conviction for second-degree murder. The Court rejected an argument that the trial court erred in admitting collateral offense evidence. The evidence showed that "Brown was the shooter in the May incident and that this evidence would be admissible as it was particularly probative of identity." Brown argued that the trial court should have held a second hearing on the admissibility of this evidence when the court was informed that Brown had a pending motion to withdraw plea in the collateral case. The First District noted that Brown had not provided any authority for the legal point that a trial court could not consider collateral offense evidence simply because a motion to withdraw guilty plea was pending.

At trial, the defendant's girlfriend testified for the State and was recalled later as a defense witness.. Physical evidence from the crime had been found in her car. During the defense case, the State impeached her on cross-examination with her prior statements, and Brown argued on appeal that portions of those prior statements should have been redacted. The Court disagreed.

"We find no issue in the fact that Perry [girlfriend] revealed that she had spoken to her boyfriend's counsel about her case, do not find that he became a secondhand 'witness,' and note that all evidence discussed (Brown's location and calls to Wells Fargo) was already admitted into evidence. We similarly reject Brown's argument that the trial court erred in admitting Perry's opinions regarding Brown's possible guilt, . . . as these statements were made by *his own alibi witness* and were appropriate for impeachment."

Perry was also impeached with a statement in which she commented on Brown "asking her to provide an alibi in his letter and her conversation with Brown's counsel about the alibi." This was challenged on the ground that it attacked the credibility or character of defense counsel. "Brown was fully aware of Perry's

interview before trial and, if he still decided to call her to testify, the State was permitted to impeach her credibility."

Taulbee v. State, 1D18-2569 (Aug. 21, 2019)

Taulbee challenged the scoring of two out-of-state convictions under the "prior record" section of the scoresheet. The Court remanded for resentencing and the State was going to have the opportunity to present "sufficient corroborating evidence of the contested prior convictions." The harmless error standard for scoresheet error on direct appeal is "the would-have-been-imposed test." The record before the appellate court did not demonstrate that the trial court would have imposed the same sentence absent any error, as the trial court "stated it would work from both the scoresheet and the request made by the State in deciding what the Appellant's sentence would be."

Second District Court of Appeal

Shrader v. State, 2D13-3712 (Aug. 23, 2019) (en banc)

The Court granted the State's motion for rehearing en banc, withdrew its prior opinion, and issued a new opinion, addressing the circumstantial evidence standard of review as discussed in Knight v. State, 186 So. 3d 1005 (Fla. 2016). The Court affirmed convictions for felony murder and sexual battery.

Shrader's main argument was "that the State did not produce sufficient evidence inconsistent with his reasonable hypothesis of innocence that the sexual acts upon the victim were consensual and that the killing occurred sometime later." The circumstantial evidence standard did not apply, however, as there was direct evidence regarding the defendant's involvement in the crime. This included "Shrader's DNA found inside the victim," where "Shrader denied even knowing the victim, let alone having sexual contact with her." The DNA evidence was "direct evidence that Shrader, at a minimum, had sexual contact with the victim, whose slain body was found at Whisky Stump near droplets of Shrader's blood leading away from the victim's body."

Semen found inside the victim's body contained Shrader's DNA. Blood found on the soil at the scene of the murder matched his DNA. The Court also focuses on multiple inconsistencies in Shrader's account, which included evasions revealing "consciousness of guilt."

Third District Court of Appeal

Cazarez v. State, 3D19-335 (Aug. 21, 2019)

"A defendant may not escape the two-year time limit for filing a rule 3.850 motion by styling the pleading as a petition for writ of habeas corpus."

Fourth District Court of Appeal

Natal v. State, 4D17-1271 (Aug. 21, 2019) (on motion for rehearing)

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

"[A]ppellant was driving more than twice the speed limit in a mixed residential/commercial neighborhood. Pedestrians were standing by the roadway waiting for a bus. A homeowner pulled into his driveway which fronts on Sheridan. While appellant says that he saw the van only sixty to seventy-five feet prior to the impact, the victim stated that he saw appellant 200 yards away, and the expert agreed that the victims started to turn when appellant was 200 yards away, not the short distance described by appellant. Appellant continued to accelerate until two seconds before the crash, and there was very little braking."

Brown v. State, 4D17-3492 (Aug. 21, 2019)

The trial court erred by failing to impose a minimum mandatory sentence based on the use of a firearm during the offense. The trial court had concerns based on the firearm's operability. However, the "'legislature did not intend to require a finding that the handgun be operational. .. ; ."

Hudson v. State, 4D18-1715 (Aug. 21, 2019)

The Fourth District reversed and remanded a conviction for felony battery after a jury trial. This was the second time the Court reversed for a new trial.

First, the trial court erred in admitting evidence of an uncharged collateral crime, "the same error that precipitated our earlier remand opinion." Second, the "trial court erroneously instructed the jury on the forcible felony exception to Appellant's self-defense argument."

The case involved a fight over a car repair, and the disagreement became violent, with the defendant being charged with stabbing the victim in the leg. At the first trial, the State introduced evidence that after the stabbing, "the victim's wife confronted Appellant, and that he punched the wife in the face." The defendant was not charged with any crime related to the victim's wife. In the first appeal and reversal, the Fourth District held that the evidence related to the punching of the wife was improperly admitted into evidence.

Prior to the second trial, the trial court granted a motion to exclude this evidence. At the second trial, a detective was testifying and the State introduced documentary evidence which included a form signed by the victim's wife, in which she "stated that she selected photograph number 5 as the person who 'hit [her]/punched [her]' and identified herself as a '[v]ictim.'" While the evidence related to the subsequent incident with the wife may have come in inadvertently, it was still error and was still not harmless.

"The forcible felony exception provides that self-defense is not available as a justification if the defendant '[i]s attempting to commit, committing, or escaping after the commission of, a forcible felony.'" "This exception applies only when the defendant is committing an independent forcible felony separate from the one for which he or she is claiming self-defense. . . . This is because the instruction essentially negates the defendant's theory of self-defense to the actual crime charged."

Maldonado v. State, 4D18-1909 (Aug. 21, 2019)

The Fourth District affirmed the revocation of probation. There was no error in denying a motion to suppress evidence obtained from a GPS monitor.

Maldonado's crimes were committed in June 2000, and he was not subject to any order authorizing the use of a GPS monitor. DOC did, however, place one on him at the start of his probation. He argued that doing this without a warrant constituted a violation of the Fourth Amendment. The State and Fourth District agreed that it was a violation of the Fourth Amendment, but "law enforcement made an objectively reasonable mistake in believing Maldonado required a monitor and any error by law enforcement was simple negligence." The classification officer who started the use of the GPS monitor erroneously believed the victim of the sex offense was a child, and that would have made the use of the monitor a statutory requirement.

As this was deemed a clerical error, exclusion of evidence from the GPS monitor would not serve any deterrent purpose. The exclusionary rule was therefore not applicable.

Fifth District Court of Appeal

Harris v. State, 5D18-1242 (Aug. 23, 2019)

The Fifth District affirmed convictions on two counts of trafficking. Harris argued that the trial court erred in denying his motion in limine, during trial, "to prevent the State from using prior sales as evidence of predisposition to rebut his planned defense of entrapment." The State had nolle prossed the charges related to those prior sales. "Contrary to Harris' suggestion, evidence of prior crimes to rebut an entrapment defense is not limited to events resulting in a conviction." And, "dropped charges are not the equivalent of an acquittal."

State v. Washington, 5D18-1698 (Aug. 23, 2019)

The Court reversed a downward departure sentence imposed for drug offenses.

The case involved a sting operation, in which a confidential informant and undercover agents made "several purchase of small amounts of crack cocaine." On one occasion, "three different agents made purchases from Washington within the same hour."

The trial court's departure reason was that although it "could not find that law enforcement's intent in this case was to manipulate Washington's sentence," "the effect on Washington was the same as if law enforcement had intentionally delayed arrest and continued to make drug purchases to obtain a higher minimum sentence."

The Fifth District found that the rationale – de facto sentence manipulation – was not supported by the evidence in this case. "The mere presence of continued transactions cannot serve as competent, substantial evidence to support a finding of sentence manipulation. To hold otherwise would extend the doctrine of sentence manipulation beyond its groundings in due process concerns and instead undermine the legislature's purpose in establishing the Criminal Punishment Code – to punish."

Copeland v. State, 5D18-2869 (Aug. 23, 2019)

The Fifth District reversed a conviction for aggravated assault with a deadly we3apon, which resulted from a "road rage" incident, because trial counsel was ineffective for "failing to request a jury instruction for the justifiable use of nondeadly force."

Copeland was riding a motorcycle and claimed that at some point in time he pulled out and displayed a loaded handgun, "because he was in fear of his life due to Twigg's aggressive driving towards him." Counsel only requested and obtained the instruction based on the justifiable use of deadly force. However, the display of a handgun, even when loaded, and even though a deadly weapon, does not constitute deadly force as a matter of law when it is not fired. Without "the nondeadly force instruction, the jury had no ability to evaluate whether Copeland had acted in self-defense with nondeadly force, consistent with his counsel's argument. Stated differently, we conclude that Copeland was prejudiced because the jury may very well have concluded that the deadly force instruction was not applicable because Copeland was not in imminent danger of death or great bodily harm at the time but, had it been also instructed on the use of nondeadly force, could have found that Copeland was justified in displaying his firearm to prevent Twigg's alleged 'imminent use of unlawful force' and acquitted him Instead, the jury was left with no choice but to decide Copeland's fate without the benefit of a proper instruction to evaluate his best, and arguably only, defense."

Williams v. State, 5D18-3984 (Aug. 23, 2019)

In an appeal regarding the imposition of a sentence for a juvenile under the 2014 statutes, after several prior appeals, Williams argued that "having his judicial review hearing and possible release to probation after fifteen years on his first-degree murder conviction, yet having to wait twenty years for his review hearing for his kidnapping conviction, results in 'grossly disproportionate' sentences, in violation of is Eighth Amendment right to have his punishments 'graduated and proportionate.'"

The Fifth District declined to address this constitutional issue, finding that Williams could have and should have raised it in his recent appeal in the Florida Supreme Court when that Court addressed his argument, and ruled in his favor, when holding that a jury had to make the factual finding under section 775.082(1)(b), "of whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim."

Sharma v. State, 5D19-146 (Aug. 23, 2019)

The Fifth District reiterated its prior holding that "'a plea is not rendered involuntary nor is ineffective assistance of counsel established when the defendant is not informed of every possible ramification or limitation concerning gain time or every possible reduction in time to be served.'" The Court certified conflict with several decisions of the Second District Court of Appeal.

George v. State, 5D19-1047 (Aug. 23, 2019)

The Fifth District reversed the denial of a successive Rule 3.850 motion for an evidentiary hearing, where it alleged newly discovered evidence.

George had obtained an evidentiary hearing on his first Rule 3.850 motion, which was denied. At that evidentiary hearing, "the deceased victim's mother and brother asked to speak to the court and both explained that someone else, allegedly Nicholas Hughey, had confessed to the crimes and bragged that 'someone else is doing his time.'" That was the basis for the newly discovered evidence claim in the subsequent motion, and it was facially sufficient.

Dinkins v. State, 5D17-1567 (Aug. 22, 2019)

The Fifth District affirmed convictions for two counts of DUI manslaughter and certified two questions of great public importance to the Florida Supreme Court.

Dinkins first argued that the "trial court erred in denying his first motion to suppress his medical records and thereafter allowing his blood-alcohol lab test results into evidence at trial because they were obtained by law enforcement without notice to him, in violation of his constitutional right of privacy." Dinkins did not receive notice and did not consent and officers did not comply with statutory requirements. The Fifth District rejected the argument because the records were seized pursuant to a search warrant based on probable cause.

The Court's ruling was based on its finding that the actions of the police officer did not warrant application of the exclusionary rule. "Here, following Dinkins' criminal actions that caused the deaths of two people, the records were generated at a hospital during the course of Dinkins' medical care and treatment and are likely still accessible from the same hospital. It is not reasonable to assume that, under the facts of this case, the State would not have pursued and obtained these

records from the hospital. It is likewise neither appropriate nor consistent with the intent of the exclusionary rule for the State to be placed in a worse position at trial, due solely to the indiscretion or improper zeal of the police officer who first subpoenaed Dinkins's medical records without notice."

The Court certified the following questions:

> DOES THE FAILURE OF THE INVESTIGATING LAW ENFORCEMENT OFFICER TO PROVIDE ANY NOTICE PRIOR TO SUBPOENAING A DEFENDANT'S MEDICAL RECORDS UNDER SECTION 395.3025(4)d), FLORIDA STATUTES, FOREVER PRECLUDE THE ADMISSIBILITY OF THESE RECORDS AT TRIAL, EVEN IFTHEY ARE SUBSEQUENTLY OBTAINED THROUGH THE ISSUANCE AND EXECUTION OF A VALID SEARCH WARRANT WITHOUT THE ASSISTANCE OF ANY INFORMATION GLEANED FROM THE PREVIOUSLY-SUBPOENAED RECORDS?
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> DOES THE INEVITABLE DISCOVERY EXCEPTION TO THE EXCLUSINARY RULE PERMIT THE ADMISSIBILITY OF A DEFENDANT'S HOSPITAL RECORDS LATER OBTAINED BY THE STATE THROUGH A VALILD SEARCH WARRANT WHEN THE RECORDS WERE FIRST ACQUITED BY THE STATE BY SUBPOENA WITHOUT NOTICE TO THE DEFENDANT IN VIOLAITON OF SECITON 395.3025(4)(d), FLORIDA STATUTES?