Case Law Update
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First District Court of Appeal

Brinson v. State, 1D18-659 (Feb. 19, 2020)

In 2002, Brinson entered into a plea resulting in convictions for aggravated battery and false imprisonment. The State nolle prossed one charge of lewd or lascivious battery. Subsequently, while on probation, Brinson was charged with failing to report as a sexual offender. Brinson moved to dismiss on multiple grounds, including claims that he had never been designated a sexual offender by the court, and the false imprisonment conviction did not necessarily encompass a sexual component.

In 1998, the sexual offender registration act was amended to enumerate both kidnapping and false imprisonment as qualifying offenses, when the victim is a minor and the defendant is not the victim's parent. Brinson argued that, as a matter of constitutional law, the State had to prove a sexual component and the court had to make a finding as to that sexual component.

The First District disagreed. Under the sex offender registration act, section 943.0435, Florida Statutes, qualification is automatic, based solely on whether the defendant has been convicted of the enumerated, qualifying offense. In this respect, it differs from the similar sexual predators registration act, which does require the court to make findings and to designate the defendant as a sexual predator. Furthermore, at the original plea colloquy, the State read into the record a factual proffer, as to which the defendant made no objection, which included a sexual component to the offense to which the defendant entered his plea.

The Court further rejected the argument that the registration act improperly delegated the determination of qualification to the Florida Department of Law Enforcement. For the same reason noted above – qualification being automatic based upon the fact of the conviction for an enumerated offense – FDLE was not making such a determination.

Flowers v. State, 1D19-3215 (Feb. 19, 2020)

A motion to suppress evidence was properly denied. The First District agreed with the trial court's conclusion that a lawful traffic stop was not prolonged more than necessary for completion of the traffic stop when the initial officer had a K-9 unit search the car during the stop.

> A traffic stop may last no longer than necessary for an officer to address the traffic violation that warranted the stop. . . . And an officer may not prolong a traffic stop to conduct a dog sniff absent reasonable suspicion of criminal activity. . . . Instead, a traffic stop may continue for the time necessary for an officer to check drivers' licenses, search for outstanding warrants, and inspect registrations and proofs of insurance. . . . In determining whether a traffic stop has been unreasonably delayed, the critical question is whether conducting the dog sniff prolongs the stop. . . .
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> Here, the record shows that the initial stop occurred at 10:15 and was based on a valid traffic violation. After speaking with Flowers and the driver, Officer Carswell ran the license of the driver at 10:21 and ran Flowers' driver's license at 10:23. Officer Carswell received the driver's criminal history at 10:23 and Flowers' criminal history at 10:27. The stop was still in progress when the dog sniff was conducted at 10:27. And Officer Carswell had not yet written the traffic citation.

Starkes v. State, 1D18-4432 (Feb. 18, 2020)

The First District reversed the denial of a motion for certification of taxable costs under section 939.06, Florida Statutes. Under that provision, a defendant who is acquitted or discharged is not liable for specified court costs and other fees. The trial court had concluded, under the unique facts of the case, that the defendant had not been "discharged" and was therefore not entitled to the certification.

The defendant had been charged in a three-count information. While that was pending, another information was filed for the felony of driving while a license was suspended. Both cases resulted in negotiated pleas. Starkes then filed motions to

withdraw pleas in both cases; only the motion as to the DWLS case was granted. While the DWLS case then remained pending in the trial court, over the State's objection, and without any appeal by the State, the trial court dismissed the DWLS.

Subsequently, the trial court concluded that the dismissal of the DWLS did not constitute a "discharge" under section 939.06. The First District disagreed. Because there was no case pending against him, Starke was discharged. The Court certified conflict with a decision of the Second District which held that a dismissal did not qualify as a discharge.

Nilio v. State, 1D18-5093 (Feb. 18, 2020)

When an appeal from the denial of a postconviction motion is pending in the appellate court, a trial court has jurisdiction to entertain another postconviction motion if the issues raised in the new motion are unrelated.

Second District Court of Appeal

Gage v. State, 2D18-4580 (Feb. 21, 2020)

In 2016, Gage was sentenced to a prison term of 50 years for nonhomicide offenses committed while he was a juvenile. He subsequently challenged that sentence pursuant to Graham v. Florida and Florida Supreme Court decisions which were based on Graham, especially Kelsey v. State and Johnson v. State. The Second District reiterated its own prior interpretation of Johnson as "'clarifying that Kelsey applies to all juveniles who have been sentenced to term-of-years sentences of more than twenty years in prison but who would not have the opportunity for judicial review as provided in chapter 2014-220, Laws of Florida.'"

The Second District recognized that its decision conflicted with decisions of the First and Fourth Districts and certified conflict to the Florida Supreme Court.

T.R.C. v. State, 2D18-4295 (Feb. 21, 2020)

A finding of guilt as to the charge of possession of burglary tools was reversed. Evidence of latex gloves found in T.R.C.'s pocket did not provide sufficient circumstantial evidence of guilt.

T.R.C. and another person were standing next to a recently stolen car in a high-crime area. T.R.C. approached the officer and handed the officer the key to the

car, saying that it had been in his residence. The officer stated that T.R.C. appeared to be wiping his prints off the key with his shirt. T.R.C. was arrested for auto theft. During a search incident to arrest, the latex gloves were found in his pocket and he was charged with possession of burglary tools.

The Second District relied on Florida Supreme Court precedent for the point that "'gloves . . . and other items of personal apparel are not objects which actually facilitate the breaking and entering of a dwelling.'" While they avoid leaving fingerprints, "they are not typically considered burglary tools under the plain and ordinary meaning of the statute or under the definition of the word 'tool.'"

Additionally, a $100 public defender fee was reversed because the trial court failed to notify T.R.C. of his opportunity to contest it.

Third District Court of Appeal

Velazco v. State, 3D18-0165 (Feb. 19, 2020)

The Third District held that dual convictions for DUI causing serious bodily injury and DUI causing property damage, arising out of the same incident, did not result in a double jeopardy violation. The victim of the bodily injury was the owner of the scooter that served as the basis for the property damage charge. The Court certified conflict with the Fourth District's decision in Anguille v. State, 243 So. 3d 410 (Fla. 4th DCA 2018).

The Court first concluded that each of the two offenses required proof of an element not required by the other offense – serious bodily injury for one, property damage for the other. The Court then concluded, based on its review of the statutory language, that the two offenses were not degree-variants of the same offense, because the legislature did not refer to them as being different degrees of the same offense. The Court also looked beyond that factor and emphasized that "[t]he mere happenstance that property ownership was vested in the same critically wounded individual cannot be logically construed to insulate the accused from the prosecution of a separate, legislatively-proscribed crime."

Finally, the Court concluded that neither offense was subsumed within the other.

Chief Judge Emas dissented, concluding that the two offenses are degree-variants of the same offense and that a double jeopardy violation therefore exists.

N.C. v. State, 3D19-613 (Feb. 19, 2020)

An adjudication of delinquency for resisting arrest without violence was reversed. The evidence was insufficient because the State failed to prove that the officers were engaged in the lawful execution of a legal duty or that they had an articulable, well-founded suspicion of criminal activity when they stopped N.C.

Officers engaged in a consensual encounter with N.C., during which they obtained identifying information. N.C. volunteered that he was a gang member and the officers entered this information into an "interview system," to document it. The next day, an officer was getting ready to enter the information into their system. The officer also saw a "safety bulletin" with N.C.'s photo, but with a different name than the one provided the previous day. It was concluded that N.C. had provided false information the previous day.

Later that day, officers again observed N.C. and decided to stop him. They approached him, with lights activated and verbally ordered him to stop. N.C. was described as having thrown his arms up, flailing, and saying, "oh man." N.C. turned and attempted to start running, but was tackled by one of the officers. The incident was also recorded by video and the appellate court described what was seen in the video.

Section 901.36, Florida Statutes, "'does not make it a crime to give a false name during a "field interview" when there has been neither arrest nor lawful detention.'" Thus, there was no basis for the officers to stop N.C. for the alleged use of a false name on the previous day.

Davis v. Junior, 3D20-232 (Feb. 19, 2020)

When the State failed to file an information within 21 days of an arrest, Davis obtained an evidentiary adversarial probable cause hearing seeking his release on his own recognizance. After the trial court denied relief, Davis filed a petition for writ of habeas corpus, which the Third District granted. The arrest was for driving with a suspended license as an habitual traffic offender. At the adversarial probable cause hearing, the State presented only hearsay evidence.

The evidence at the hearing was that at the time Davis was stopped, the officer ran a records check, which disclosed that Davis was an habitual traffic offender. There was no computer printout of that records check.

The Third District held that at an adversarial probable cause hearing, under Rule 3.133(b), Fla.R.Crim.P., the State cannot rely solely on hearsay evidence.

Diaz v. State, 3D20-246 (Feb. 19, 2020)

A petition alleging ineffective assistance of appellate counsel, filed more than 10 years after the conviction and sentence became final, was untimely.

Fourth District Court of Appeal

Quarles v. State, 4D18-1502 (Feb. 19, 2020)

A conviction for second-degree murder was reversed because the defendant's confession, which was admitted into evidence, was not voluntary.

The defendant was 15-years old at the time of his arrest. A detective read him his Miranda warnings and further advised him that he was represented by counsel and that his attorney did not want him to make any statement. The defendant refused to answer any questions. About an hour later, the defendant initiated contact with the detective and wanted to speak.

With respect to the Miranda warnings, rather than re-read them, the detective stated the following:

> Q. I guess it was about an hour ago that we talked, okay? I read your Miranda warnings to you. It was pretty thorough, you're a pretty smart guy. Do you still understand them?
>
> A. Yes, sir.
>
> Q. Do you still understand everything that we talked an hour ago about? You understand everything?
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> A. Yes, sir.

After a defendant reinitiates communication with an officer and wishes to speak, full Miranda warnings must be given again.

Maclean v. State, 4D18-2467 (Feb. 19, 2020)

Maclean appealed a conviction for armed sexual battery. The Fourth District reversed because the trial court failed to instruct on the requested lesser-included-offense instruction on sexual battery without a firearm.

The defendant had previously moved to dismiss the armed sexual battery charge based on the statute of limitations and the court had denied that motion. At trial, the defendant waived the statute of limitations defense in order to obtain the instruction on the lesser offense of sexual battery without a firearm. The trial court denied the motion to dismiss based on the Fourth District's prior decision in Cartagena v. State, 125 So. 3d 919 (Fla. 4th DCA 2013).

The Fourth District held in Maclean's case that Cartagena was distinguishable. The earlier case had held that "a criminal defendant cannot obtain a dismissal of a charge based on the statute of limitations, and later at trial choose to waive the statute of limitations defense as to lesser-included offenses of other charges that arose out of the same criminal episode." Cartagena was inapplicable in this case because the trial court had previously denied the motion to dismiss based on the statute of limitations.

State v. Sampaio, 4D18-3416 (Feb. 19, 2020)

The defendant was charged under section 817.52(3), Florida Statutes, with failing to redeliver a hired vehicle. The trial court granted the defendant's motion to dismiss because the defendant did not initial the provision on the agreement containing the warning set forth in section 812.155(6), that the failure to return rented property upon the expiration of the rental period is punishable as set forth in section 812.155. That statutory warning provision is not referenced in or made a part of the prosecution under section 817.52(3).

Fifth District Court of Appeal

Rish v. State, 5D19-3103 (Feb. 21, 2020)

The Fifth District reversed the summary denial of one claim in a Rule 3.850 motion for further proceedings, because the court records attached to the trial court's order did not conclusively refute the claim.

Rish alleged that the State offered him a plea of seven years in prison, without habitual offender sanctions, and that his counsel directed him to reject it because the State had a "very weak" case. He alleged that he did not know that he was subject to habitual offender sanctions until after he rejected the State's offer, and that had he been aware of that, he would have accepted the offer, rather than turn it down and enter an open plea to the court. When he entered the open plea, he received a 30-year prison sentence.

The trial court's order attached the plea colloquy and sentencing transcripts, but those transcripts did not demonstrate that Rish knew that he had been subject to habitual offender sanctions before he entered the plea.