Case Law Update
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Supreme Court of the United States

Kansas v. Glover, 18-556 (Apr. 6, 2020)

A police officer on routine patrol ran a search on the license plate of a car being driven. The search disclosed that the car was registered to Charles Glover, Jr., whose license had been revoked. The officer assumed the driver of the vehicle was the same as its owner, and without any evidence of a traffic violation, stopped the vehicle for further investigation. The subsequent stop resulted in evidence being seized.

The Supreme Court held that "when the officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable."

First District Court of Appeal

Risech v. State, 1D18-2415 (Apr. 9, 2020)

The First District affirmed convictions for multiple offenses and addressed two issues.

First, the Court found that the lower court properly denied a motion for judgment of acquittal on the charge of harassing a victim. "Appellant argues that because the State's evidence showed that he and the victim engaged in consensual calls while he was incarcerated and that the victim initiated some of the contacts, there was no proof of harassment."

The First District noted that the term "harass" was not defined in the statute under which the offense was charged. Applying a dictionary definition, which included "exhaust, fatigue," "to annoy persistently," or "to create an unpleasant or hostile situation . . . by uninvited and unwelcome verbal or physical contact," the Court found that the evidence was sufficient: "When considering this definition, there is no question that Appellant's numerous calls to the victim and the victim's trial testimony showed that Appellant repeatedly harassed her to change her story and to have the charges dropped. Indeed, the victim eventually provided a sworn

statement requesting that the charges be dropped. She testified that she was tired of Appellant's requests and that she felt guilty and scared."

An argument that the trial court erred in denying a defense peremptory challenge was not properly preserved for appellate review. Defense counsel attempted to backstrike a juror and the prosecutor requested a race-neutral reason. Defense counsel responded that the juror was a Caucasian male and not a member of a protected group. The court directed counsel to provide a race-neutral reason, and counsel stated that the defendant "simply did not like him from the responses that he provided while we were in the voir dire process." The court rejected the challenge, stating that "you have to have a record reason. . . ." At the conclusion of jury selection, the court inquired if the six jurors were acceptable to the defense, and counsel stated that it was an "acceptable jury." The judge asked the defendant, "Are these the six jurors and one alternate that you'd like to have serve as your jury," and the defendant responded, "Yes."

Although the jury was sworn just minutes after the completion of the challenge conference at which the foregoing occurred, in light of the statements in which defense counsel and the defendant stated that the jury was acceptable, proper preservation of any objection required a renewal of the objection upon completion of the selection process and prior to the swearing of the jury.

Even if the issue had been preserved for review, the appellate court found that it was without merit. First, white males have previously been found by the First District to be a cognizable group. Second, the response about simply not liking the juror did not qualify as a race-neutral reason to support the peremptory challenge. The Court quoted from a Florida Supreme Court decision: "Florida courts have consistently rejected a general feeling or 'dislike' of a juror as a genuine race-neutral reason for exercising a peremptory challenge."

Thrift v. State, 1D19-998 (Apr. 9, 2020)

The trial court did not err in denying a motion for judgment of acquittal as to the offense of vehicular homicide. Thrift argued that the State failed to prove that she acted willfully or wantonly. The First District rejected that argument based on "repeated instances of illegal as well as reckless driving maneuvers within a short distance from and short time before the crash." That would enable a jury to "conclude death or great bodily harm was foreseeable based on how Thrift was driving."

Thrift drove through a red light at a very busy intersection. She was observed driving "aggressively," "swerving and 'cutting off' other cars, [and] making illegal repeated u-turns over concrete medians."

Lyons v. State, 1D19-2136 (Apr. 9, 2020)

The Court reiterated holdings from previous decisions. Sentencing as an habitual felony offender does not constitute a violation of double jeopardy principles. Findings to support HFO sentencing need not be made by a jury.

Simmons v. State, 1D18-4441 (Apr. 7, 2020)

The trial court erred in finding a Rule 3.850 motion to be untimely filed. The motion in question was never received by the clerk of the circuit court and the State Attorney did not have a copy in its file. The defendant provided the trial court with a copy bearing a date stamp from the correctional institution reflecting that it was timely tendered to prison officials for mailing. That stamp created the presumption of timeliness and the State neither disputed it in the trial court nor rebutted it.

Hernandez-Paz v. State, 1D19-1362 (Apr. 7, 2020)

A motion for judgment of acquittal as to two counts of attempted sexual battery was properly denied.

The defendant returned to the victim's apartment saying that he was looking for a tool that he thought he had left there when he was replacing flooring previously. While there, he blocked the victim from leaving her bedroom and tried to reach under her pajama shorts and grab her vagina. She slapped his hand away and told him, "no." The defendant then placed the victim in a bear hug and grabbed her buttocks. He tried to get her on the bed and she pushed him away and she then ran out.

O.G. v. State, 1D19-2683 (Apr. 7, 2020)

The trial court erred by placing O.G. in a non-secure residential program without first requesting a commitment level recommendation from the Department of Juvenile Justice.

Second District Court of Appeal

Bryan v. State, 2D19-2331 (Apr. 8, 2020)

Bryan was on probation for having possessed child pornography and was alleged to have violated it by possessing a copy of Penthouse magazine. The Second District found that the evidence was insufficient for this alleged violation because the State failed to prove that the possession of the magazine was relevant to Bryan's deviant behavior pattern.

The relevant condition of probation prohibited possession of materials relevant to the deviant behavior pattern. The "trial court made no findings describing the nature of the material in Penthouse magazine, its content, or how it related or was relevant to Mr. Bryan's deviant behavior pattern. In fact, the only evidence before the trial court was that the pictures in the Penthouse magazine depicted images of adult persons and the magazine could be legally purchased by anyone over the age of eighteen."

Fourth District Court of Appeal

Kramer v. State, 4D18-88 (Apr. 8, 2020)

The trial court erred in denying a motion to suppress statements by the defendant which were obtained after the defendant indicated that she did not want to say anything.

Kramer was charged with DUI manslaughter and other offenses. The first officer to interrogate her did so after complete Miranda warnings and an agreement by Kramer to answer questions. Another officer then took her to another room, where a prosecutor was present, and again Mirandized Kramer, but indicated that he was doing so with respect to his "criminal" investigation, as opposed to whatever the first officer had been doing. When asked whether she wanted to make any statements, Kramer responded, "no," and the officer followed that up with two more questions to the same effect, eliciting two more negative responses from Kramer. The officer still persisted in the effort to get Kramer to answer questions and she finally did so, making incriminating statements.

Dean v. State, 4D19-2406 (Apr. 8, 2020)

The Florida Supreme Court had previously addressed Dean's sentence in this case and reversed for resentencing because a PRR sentence was not supported by the evidence. On remand, the State was authorized to present evidence to support a PRR sentence. When the case was back in the trial court, that court, refused to let Dean present additional evidence as to the proper sentence. The trial court agreed with the State that the case was remanded solely to determine the issue of qualification for the PRR sentence.

The Fourth District reversed because Dean was entitled to a de novo resentencing, which extended to the entirety of the sentence, including the right to present evidence and argument as to mitigation of the sentence.

One judge dissented.

Drennan v. State, 4D19-857 (Apr. 8, 2020)

Although the trial court made an oral finding of the competency of the defendant, the court failed to enter a written order. A deputy clerk's notes or minutes are not sufficient. The trial court was directed to enter the written order on remand.

Bruni v. State, 4D19-885 (Apr. 8, 2020)

The trial court erred by failing to make an independent determination of the competency of the defendant. Defense counsel stipulated to the competency of the defendant based on the experts' reports, and the trial court accepted the stipulation regarding competency. The court must make its own independent determination.

State v. Fredericks, 4D19-2407 (Apr. 8, 2020)

Arizona v. Gant limits the scope of a search of a vehicle after a defendant is arrested. The Fourth District addressed the following issue based on Gant: "After the police (1) lawfully investigate a driver who has voluntarily exited his vehicle, (2) lawfully arrest the driver for a narcotics-related offense, (3) lawfully move the arrested driver out of the vehicle's reach, and (4) timely deploy a narcotics K-9 which alerts to the vehicle to provide probable cause to search the vehicle, are the police still permitted to conduct a warrantless search of the vehicle in light of *Gant*?"

The Fourth District concluded that such a search was valid. Under Gant, police may conduct a search of the vehicle incident to an arrest "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." The search may extend beyond that based on unique circumstances "when it is reasonable to believe evidence relevant to the crime of the arrest might be found in the vehicle."

In this case, the driver had already been secured in a patrol car. However, the K-9 alert provided the basis for a reasonable belief that the vehicle contained evidence relevant to the crime of the arrest.

Washington v. State, 4D19-2537 (Apr. 8, 2020)

In 2016, as a result of post-conviction motion, the trial court granted the defendant's motion for a resentencing in light of then-existing decisions regarding juvenile life sentences. In 2019, prior to that resentencing, based on new decisions from the Florida Supreme Court, the trial court granted the State's motion to rescind the resentencing order. Once the 2016 resentencing order became final, when the State did not seek rehearing or appellate review, the trial court lost jurisdiction to vacate it.

Fifth District Court of Appeal

Fruehwirth v. State, 5D19-297 (Apr. 9, 2020)

Pursuant to the Court's recent decision in Gabriel v. State, 44 Fla. L. Weekly D2913 (Fla. 5th DCA Dec. 6, 2019), the Court reversed the defendant's sentence because under the Criminal Punishment Code, the lowest permissible sentence "should be imposed only if it exceeds [the] collective statutory maximum, not each individual statutory maximum." As the Court previously did in Gabriel, it certified that question to the Florida Supreme Court as a question of great public importance.

Dunnell v. State, 5D19-2195 (Apr. 9, 2020)

When the trial court denied the defendant's Rule 3.850 motion alleging ineffective assistance for failing to investigate an entrapment defense, the court relied on statements by the prosecutor during the trial regarding the contents of video recordings of the drug transactions. Transcripts of the videos were not attached to the lower court's order. As such, the portions of the record attached to the order did

not conclusively refute the claim and the case was remanded to the trial court for further proceedings.