Case Law Update
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Supreme Court of Florida

Owen v. State, SC18-810 (June 25, 2020)

The denial of a Hurst claim in a successive motion under Rule 3.851 was affirmed. The jury unanimity requirement was satisfied in this case because the jury's finding were unanimous as to two aggravating circumstances: prior violent felony and murder during the course of a burglary.

Santiago-Gonzalez v. State, SC18-806 (June 25, 2020)

The defendant entered a guilty plea to the charge of first-degree murder, and after a penalty phase proceeding before the judge, he was sentenced to death.

The Supreme Court rejected the defendant's challenge to his competency to enter the guilty plea. The trial court had previously appointed two experts. Although noting mental health issues, both concluded that the defendant was competent. At the change-of-plea hearing, the two reports were submitted, and the defense did not wish to present any additional evidence. The reports were considered as evidence and the trial court made an independent determination, based on those reports, that the defendant was competent.

After that determination of competency, and prior to the penalty-phase proceeding, the defendant engaged in acts of self-harm, which resulted in his commitment for involuntary treatment, with a finding that he was not competent to consent to treatment. He also had an appearance in one court motion hearing where he resorted to profanity in court and accused everyone of lying to him. As a result of this history, he argued on appeal that the trial court erred by not conducting a further competency hearing prior to the penalty phase. The Supreme Court rejected that argument, noting multiple factors: the original competency determination, notwithstanding a history of mental health problems; the failure of the defense to raise further concerns; the absence of inappropriate behavior in court; the judge's opportunity to observe the defendant in court on many occasions; appropriate responses of the defendant when questioned; the defendant's exhibition of rational

thought processes in court; the absence of material new information observed by the judge in court.

The Supreme Court also found that given the oral finding of competency, the absence of a written order to that effect did not constitute fundamental error.

The imposition of the death sentence was deemed proportionate; the killing of the victim was through multiple stab wounds. There were five aggravators, including prior violent felony, HAC and CCP, not statutory mitigators, and 19 nonstatutory mitigators. The Supreme Court also rejected challenges to the HAC and CCP factors.

Eleventh Circuit Court of Appeals

United States v. Ross, 18-11679 (June 24, 2020)

In a previous decision, United States v. Sparks, 806 F. 3d 1323 (11th Cir. 2015), the Court held that a suspect "who 'abandons' his privacy or possessory interest in the object of a search or seizure suffers no 'injury' – and thus has no standing – in the Article III sense, and, accordingly, that an argument asserting the suspect's abandonment is jurisdictional, nonwaivable, and subject to *sua sponte* consideration." The Court, sitting en banc, overruled Sparks and now held "that a suspect's alleged abandonment implicates only the merits of his Fourth Amendment challenge not his Article III standing – and, accordingly, that if the government fails to argue abandonment, it waives the issue."

The judge who wrote the Sparks opinion, wrote a short concurring opinion in this case, noting the error of her own prior opinion in Sparks.

United States v. Denson, 19-11696 (June 24, 2020)

Denson appealed the district court's order granting his motion for a reduced sentence under the First Step Act for his crack cocaine conviction, arguing that the court erred by failing to hold a hearing with the defendant present.

The Eleventh Circuit joined the Fifth and Eighth Circuits in holding that "the First Step Act does not require district courts to hold a hearing with the Defendant present before ruling on a defendant's motion for a reduced sentence under the Act."

United States v. Owen, 15-12744 (June 24, 2020)

In the middle of his trial on charges of bank fraud and money laundering, during which the defendant was representing himself, he pled guilty. On appeal, he argued that there was no knowing waiver of counsel. The Eleventh Circuit disagreed.

The Court's opinion enumerates eight factors that must be considered to determine whether a waiver of counsel was knowing, intelligent and voluntary, and then applied those factors: 1) Owen's age, health and education. He was 68 and a paralegal and had no mental disabilities. While there were some physical limitations, the district court accommodated them with frequent breaks and allowed Owen to be seated while addressing the court. 2) Owen had an extensive relationship with counsel prior to the waiver of counsel. 3) Owen's responses to questions in court reflected an awareness of the charges and potential penalties and defenses. As to a lack-of-intent defense, which he asserted he did not understand, the record reflected that he was admonished repeatedly that the defense was not viable. 4) and 5) Based on his experience as a paralegal, Owen had knowledge of rules of procedure, evidence and courtroom decorum. 6) The district court offered standby counsel for at least part of the trial, but Owen refused to accept the appointment. The Eleventh Circuit had not previously addressed the significance of such a refusal when evaluating the enumerated factors and gave Owen the benefit of the absence of standby counsel when weighing the factors. 7) The record refuted the existence of any coercion. 8) Manipulation of the proceedings. There were indicia that Owen was trying to delay the proceedings, and this factor weighed against him. The only factor viewed favorably toward Owen was the absence of standby counsel.

United States v. Caldwell, 18-13426 (June 24, 2020)

Caldwell appealed convictions from five armed-bank robberies and firearm offenses.

Caldwell sought to suppress identification testimony following a show-up identification involving by one of the bank tellers. The Eleventh Circuit concluded that even if the show-up was unduly suggestive, it was still sufficiently reliable. The teller had close visual contact with the robber, even though the time period was under one minute. She was focused on the robber during this time, and the description she provided had details, which confirmed the degree of her attention. The description she provided also matched Caldwell – a black male, about 5'9", slight to medium build, inside-out t-shirt with a Steelers' logo and blue jeans. Even though the teller was not positive during the show-up, she stated that Caldwell was consistent with

the description she had provided. And, the show-up occurred about 30 minutes after the robbery.

The Court also found that the evidence was sufficient as to one challenged conviction. Caldwell challenged the sufficiency of evidence to show that the branch of the bank was FDIC-insured at the time of the robbery. The government introduced an FDIC certificate from 1999, 17 years prior to the robbery, for Bank of America; as well as testimony from a records custodian and vice president of BOA who maintained that record and stated that it covered all of BOA's financial centers, and that BOA was FDIC-insured at the time of the robbery. There was also testimony that FDIC certificates do not expire and do not require renewal once issued.

United States v. Castro and United States v. Tigua, 19-10177 and 19-10213 (June 26, 2020)

The primary issue in this appeal was whether Castro and Tigua qualified for relief under the First Step Act of 2018's safety-valve provision, when they were adjudicated guilty and sentenced after that Act's effective date.

Section 402 of the Act broadened circumstances under which mandatory minimum sentences could be avoided. A statutory amendment applied to "a conviction entered" after the effective date of the statutory amendment. Although the sentencing in this case occurred after the effective date, the jury's verdict preceded it. "Conviction" has a meaning distinct from "sentence," and means the judgment of the jury or judge that the defendant is guilty of the charged offense.

United States v. Singer, 18-14294 (June 26, 2020)

Singer was convicted for attempting to export NanoStations from the United States to Cuba. Under the relevant statutory and regulatory scheme, for such exporting, "a person must have a valid permit to enter Cuban territorial waters and a valid license authorizing the export of the items to Cuba." A general license exception for "support of the Cuban people" will not suffice. Exportation without a valid license is an offense under 50 U.S.C. s. 1705.

Singer challenged the sufficiency of the evidence, arguing that "the government was required to prove he knew of the facts that made the NanoStations subject to prohibitions on exports to Cuba without a license." The Eleventh Circuit

agreed with that argument, but concluded that the jury was properly instructed on the level of knowledge required for a conviction and that the evidence was sufficient.

Singer was charged with attempted smuggling under 18 U.S.C. s. 554(a), with knowingly attempting to export any merchandise, article or object contrary to any law or regulation of the United States. He was further charged with knowingly attempting to export the NanoStations contrary to 50 U.S.C. s. 1705.

Singer argued that the government had to prove that he was aware of the special characteristic of the NanoStations – "their ability to encrypt communications" – that made them subject to control under the export regulations. When "it comes to statutes that criminalize violations that regulate what can otherwise be innocent conduct, it is not enough that the defendant engaged in actions that the law prohibits. Rather, we must construe the statute to satisfy the 'longstanding presumption, traceable to common law, that Congress intends to require a defendant to possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct.'" As a factual matter, the government may prove this circumstantially.

Based on those general principles, the Court construed the statutory provisions as requiring proof of such a culpable mental state. The evidence, however, was sufficient. Singer had repeatedly been warned that he had to comply with all "OFAC & COMMERCE'S REGULATIONS." Forms that Singer signed included warnings about the need for an export license from the Department of Commerce. Singer also lied to officials, stating that he had nothing to declare except for a few items in plain view, which did not include the NanoStations, thus suggesting that he knew he needed a license for exporting.

The evidence was also sufficient to establish that Singer took a "substantial step" towards the commission of the offense. Singer argued that he canceled the trip to Cuba on May 2nd, after officers visited him on May 1st, and that he had done nothing more than make preparations for traveling. The Eleventh Circuit found that the contention that the trip was "canceled" was subject to dispute and resolution by the jury, as there was evidence that the trip was not canceled. There was evidence that he obtained a permit allowing him to sail to Cuba on May 2nd. And, on May 2nd, he told an officer that he had a valid form allowing him to sail to Cuba and that he wished to. And, he did travel to Cuba by boat on May 3rd, the day the NanoStations were seized.

Singer had sought a jury instruction regarding his lack of awareness of the export control laws. Although the district court did not give that instruction, it instructed the jury that the government had to prove "that the Defendant knew that exportation or sending of the merchandise was contrary to law or regulation." This provided the substance of what Singer's requested instruction sought. Additionally, the language in Singer's requested instruction risked unnecessarily interjecting the concept of "ignorance of the law."

First District Court of Appeal

Bradwell v. State, 1D18-5083 (June 26, 2020)

The First District affirmed multiple convictions for drug offenses and rejected Bradwell's argument that the State failed to prove constructive possession.

Bradwell was stopped for driving with a suspended license. He was driving and there was a passenger in the front seat. A canine alerted by the rear passenger door for the presence of narcotics, and a locked safe was found under a pile of clothes. The officers could not obtain the code from Bradwell and forced the safe open, finding suspected controlled substances. Inside the safe were paper receipts from a substance abuse counseling service, with Bradwell's name on them, along with copies of a driver's license, social security card and birth certificate with the name of Weaver.

Whether under the direct evidence standard of review or the recently-abandoned circumstantial evidence standard, the evidence was sufficient. The locked safe was found in the car driven and owned by Bradwell. While papers with the name of Weaver were found inside, Weaver was not in the car and nothing in the car or near the safe was linked to the passenger. And, other papers in the safe were linked to Bradwell.

Brown v. State, 1D19-2602 (June 26, 2020)

A conviction for robbery by sudden snatching was reversed because the State failed to prove that the defendant took the stolen cell phones from the victim's person.

Through an on-line transaction, the defendant arranged to purchase cell phones from the victim. At the agreed location, the victim called the transaction off, believing bills shown by Brown to be fake. The victim retrieved the phone and

placed them on the dashboard of his truck. Brown reached into the truck, grabbed the pones, and left.

Robbery by sudden snatching requires that the property be taken from the person of the defendant. The dashboard was neither the person of the victim nor its functional equivalent.

Burke v. State, 1D19-3322 (June 26, 2020)

The First District affirmed an order of the trial court authorizing the forced medication of the defendant by the Department of Children and Families.

Forced medication of a defendant, when it is for the sole purpose of restoring competency to stand trial, is evaluated under a four-part test of the United States Supreme Court, from Sell v. United States. However, that four-part test is not necessary for resolution of a forced-medication issue when the medication is not for the sole purpose of restoring competency. In this case, a psychiatrist testified that the medication was necessary for treatment of the defendant's mental illness and that there was a risk of brain damage without the medication.

Chavez v. State, 1D19-128 (June 22, 2020)

A petition for removal of the requirement to register as a sexual offender was properly denied. The statute authorizing petitions for removal includes a list of offenses qualifying for possible removal. The offenses for which Chavez was convicted, traveling to meet a minor and unlawful use of a computer service, both under section 847.1035(4), were not enumerated as qualifying offenses for removal.

Second District Court of Appeal

Thelus v. State, 2D18-4357 (June 26, 2020)

After finding the defendant competent to proceed, the court failed to issue a written order with that finding. Thelus then entered an open plea, but sentencing was deferred. Prior to sentencing, he filed a motion to withdraw the plea. At the time of the sentencing hearing, Thelus's counsel moved to strike the motion to withdraw plea, stating that it required the presentation of testimony from Thelus, but the defense was not prepared to present the testimony. The court struck the motion. Thelus then told the court that he had not received the transcripts of the depositions prior to his plea and that he was not "in the right state of mind" when he entered the

plea. He also stated that he was not advised by counsel that the entry of the plea would constitute a waiver of an appeal of the denial of his suppression motion. He added that he wanted a trial.

The trial court failed to appoint conflict-free counsel, and current counsel's motion to strike the motion to withdraw plea was therefore improperly granted.

Cusamano v. State, 2D18-5113 (June 26, 2020)

Cusomano appealed an order revoking his probation. The revocation was based on three violations – leaving the county without permission of the probation officer; possession of a firearm; and a new law violation. In the aftermath of a hurricane, Cusomano was found driving a car, with several others, outside of Hillsborough County. Others in the car possessed firearms.

The firearm possession charge was not supported by the evidence, as the State failed to prove constructive possession. One of the weapons was "either slung across a passenger's chest or stowed somewhere behind the front seats." Mere proximity is not enough to establish constructive possession. The case was remanded to the trial court for reconsideration, as the appellate court could not determine whether the trial court would have revoked probation based on the remaining violations.

DeMare v. State, 2D19-2959 (June 26, 2020)

A sworn motion to dismiss the charge of traveling to meet a minor in violation of section 847.0135(4)(a), Florida Statutes, was reversed because the undisputed facts did not rebut the defense of subjective entrapment.

An undercover detective engaged in five days of electronic communications with the defendant, posing as an 18-year old, before revealing on the fifth day that she was actually a minor. The defendant then traveled to meet the fictitious minor and was arrested. When the detective revealed that the fictitious correspondent was only 14, the defendant "immediately tried to end the relationship, but Amber suggested they could still be friends." Amber also suggested that they still engage in sexual conduct. The defendant was still reluctant, but responded as to what he would do if Amber had been 18. The defendant asked for photos, but specified that they not be nude photos. The defendant reminded Amber of legal difficulties based upon her age. The defendant eventually suggested that they meet to smoke marijuana, while Amber continued to make sexually suggestive comments. Amber continued to engage in efforts to get the defendant to change his mind about sex.

Analyzing the issue of subjective entrapment, the Second District found that law enforcement induced the defendant to engage in the offense. The defendant had no prior record of offenses against minors, and he presented evidence of lack of predisposition. It then became the State's burden to demonstrate, by proof beyond a reasonable doubt, that the defendant "'was awaiting any propitious opportunity or was ready and willing, without persuasion, to commit the offense."

White v. State, 2D19-2009 (June 24, 2020)

The trial court erred in dismissing a Rule 3.850 motion. On March 13, 2019, the trial court issued an order regarding possible sanctions, requiring White to respond within 30 days. On April 1, 2019, White tendered his response to corrections officials for mailing. On May 1, 2019, the trial court dismissed the Rule 3.850 motion due to a failure of White to respond as ordered. White's response was timely filed under the prisoner mailbox rule and his Rule 3.850 motion therefore should not have been dismissed.

Third District Court of Appeal

Ceus v. State, 3D18-1918 (June 24, 2020)

The defendant entered an open plea to the court and argued on appeal that the court failed to consider the imposition of a youthful offender sentence. The Third District disagreed: "Here, the weighty remarks delivered by the trial judge following the presentation of evidence evinced reflective consideration of the relevant factors and knowledge of the available sentencing alternatives."

Baptiste v. State, 3D18-2403 (June 24, 2020)

Baptiste argued that the trial court coerced a verdict through the use of a second, modified Allen charge. The Third District disagreed, concluding that the error at issue was invited.

The trial court had given an Allen charge and the jury then returned a verdict, stating that it was unanimous. During polling of the jurors, one juror denied agreeing with the verdict. The court then took a recess, during which the defendant conferred with counsel. "Thereafter, the defense requested that the jury be sent a note instructing them to continue deliberating, along with the jury instructions and a new verdict form."

> The court stressed to the parties that because it had already given an Allen charge, it did not intend for the jury to continue to deliberate. The court explained that writing a note with such an instruction might give rise to misinterpretation. Rather, the court advised the parties that it would instruct the jury solely to memorialize on a new form what their verdict was, if they had one. Defense counsel replied, "that's fine." The court again asked counsel if the parties were in agreement, and both responded affirmatively. Thereafter, the court instructed the jury in open court that it was giving them a new set of verdict forms and asking them to go back to fill them out. The court advised the jury: "If you have a unanimous verdict, please fill out the verdict accordingly. If you do not have a unanimous verdict, please knock on the door . . . and we'll bring you back out here." The jury then returned a unanimous verdict for the lesser included offenses. . . .

Two or more consecutive Allen charges are deemed indicia of coercion. The Third District found that the language used by the trial court qualified as a modified Allen charge and was erroneous. However, the defendant did not move for a mistrial after the court instructed the jury and did not object to the language used by the court, and thereby waived objection. Furthermore, even if the Third District were to treat the error as fundamental, the Court concluded that it was still waived by agreement to the modified charge.

Tillman v. State, 3D19-794 (June 24, 2020)

The defendant was convicted of misdemeanor battery as a lesser included offense, and argued a theory of self-defense. During closing argument, the prosecutor stated: "Now, in order to believe that Mr. Tillman acted in self-defense, there needs to be some evidence that came out during his trial to support that." The court overruled objections based on burden-shifting and a misstatement of the law. The State then continued to repeat that point and added that all of the evidence showed that the defendant was the aggressor.

The defendant reiterated these objections on appeal. The Court disagreed: "Here, the comments made by the State do not misstate the law or shift the burden

of proof. The comments merely reflect the State's belief that it overcame its burden of proof based on the testimony it presented or by inference in its case-in-chief."

Florida Department of Children and Families v. The State of Florida and A.L., 3D20-745 (June 24, 2020)

The Third District granted DCF's petition for writ of certiorari and quashed the trial court's order which compelled DCF "to arrange for the provision of mental health treatment in jail to an inmate adjudicated incompetent to proceed."

Neither party to the juvenile delinquency proceeding had requested the relief that the trial court granted. In the Third District, neither the State nor A.L., took a position on the merits of DCF's certiorari petition. The granting of relief by the trial court when it was beyond what any party had requested in the trial court constituted a due process violation.

Fourth District Court of Appeal

Preval v. State, 4D18-2475 (June 24, 2020)

The Fourth District affirmed convictions for attempted murder and other offenses.

There was no error in not conducting a Faretta inquiry. The defendant made a request for self-representation in another pending case; not this case. The Court noted six other issues, but did not address them. One judge dissented as to one of the issues not addressed by the majority. That issue pertained to the redaction of a letter admitted into evidence and the application of the rule of completeness.

Kalivretenos v. State, 4D18-2920 (June 24, 2020)

The Fourth District reversed a conviction for burglary for a new trial. The trial court erred by permitting comments and testimony on post-Miranda silence.

The defendant agreed to talk to detectives. When asked about items she took from a house, she refused to answer and requested a lawyer. During a pretrial hearing, the State indicated that it intended to introduce into evidence only a limited statement made: that the defendant went to the house and got her stuff. Defense counsel agreed that that statement could be admitted. At trial, the State, over

objection, was permitted to comment and adduce evidence that when the defendant was asked what items she took, she asked for a lawyer.

Fifth District Court of Appeal

Rollins v. State, 5D19-3692 (June 26, 2020)

A claim asserted in a Rule 3.800(a) motion to correct illegal sentence would have required an evidentiary hearing for its disposition, and was therefore not cognizable in a Rule 3.800(a) motion. The trial court erred, however, by dismissing the motion. The court should have treated it as a Rule 3.850 motion and provided the defendant with the opportunity to amend it to make it facially sufficient.