

Case Law Update
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Prepared by
Richard L. Polin

Eleventh Circuit Court of Appeals

[United States v. Ross](#), 18-11679 (July 7, 2020)

After ruling, en banc, in this case, on June 24, 2020, that the failure of the government to argue a suspect's alleged abandonment of a privacy or possessory interest in the object of a search or seizure constitutes a waiver of the abandonment argument by the government, the Eleventh Circuit applied that principle to the facts of this case.

On appeal, the government argued that Ross abandoned the motel room that had been searched and therefore lacked standing to assert a Fourth Amendment challenge to the subsequent two searches. As the government failed to raise the abandonment argument in the district court, it was waived and could not be asserted on appeal. However, Ross's challenges to the searches failed on the merits.

Officers entered a motel room to execute an arrest warrant. At the time, they had a reasonable belief that the room was being used by Ross, as they observed Ross in the parking lot, going to a vehicle and then returning to the room and reemerging. Based on a reasonable belief that Ross was in the room at the time of execution of the warrant, the officers were authorized to execute the warrant and conduct a "limited protective sweep of the room to ensure that no one inside posed a danger to them," and to seize a gun that was found in plain view.

A subsequent search was done later that morning, with management's consent, and drug-related evidence was found. This was done after 11:00 a.m., the standard checkout time for the motel. At that time, Ross lost his reasonable expectation of privacy in the room. Management could therefore give consent to entry into the room by officers.

First District Court of Appeal

[Finch v. State](#), 1D18-3993 (July 6, 2020)

A conviction for second-degree murder was affirmed. The Court addressed the sufficiency of evidence and found that there was sufficient evidence that the defendant “acted with hatred, spite, ill will, or evil intent when he shot the victim in the back after losing to him all of his girlfriend’s money and his gun during a dice game.” Appellant argued that this was a case of an “impulsive overreaction.” The Court disagreed: the “act of pointing a loaded gun at the victim and shooting him in the back demonstrated that he acted with the requisite intent to commit second-degree murder.” This was further evidenced by the defendant’s failure to stay and call 911.

[Brown v. State](#), 1D18-5205 (July 6, 2020)

The First District affirmed a conviction for second-degree murder and addressed and rejected the claim that the trial court erred “by excluding a certified copy of the victim’s judgment and sentence for murder and armed robbery.” Brown asserted self-defense during the trial, and sought to offer this judgment and sentence “to corroborate his testimony that he knew that the victim committed murder and armed robbery.”

The trial court’s reason for excluding the judgment was that Brown had already testified that he knew about the murder and robbery committed by the victim, but there was no evidence showing that Brown had knowledge of the judgment of conviction and sentence of the victim, and therefore, the judgment was not relevant to Brown’s state of mind at the time of the offense. The First District found no abuse of discretion in the exclusion of the judgment, “particularly given the Florida Supreme Court’s admonition that trial courts are to exercise caution when admitting corroborative evidence of specific acts.”

Second District Court of Appeal

[Floyd v. State](#), 2D19-1234 (July 10, 2020)

The trial court denied a Rule 3.850 motion, alleging ineffective assistance of counsel, after an evidentiary hearing. The Second District reversed that decision and ordered a new trial.

During the trial, counsel elicited the nature of Floyd's prior convictions. Counsel was alleged to have misadvised the defendant that the State would not be able to impeach him with a prior conviction for armed sexual battery of the key witness in the case, because that conviction was then pending direct appeal. At the evidentiary hearing, Floyd testified that he would not have testified if he had known that he would be impeached with that conviction.

Although the trial court made credibility determinations in support of its rejection of the claim, that court "failed to recognize that there was no conflict in the testimony on the claim of misadvice: counsel testified that had he known that the prior armed sexual battery conviction would have to be disclosed as one of Floyd's priors, he would not have elicited the specific nature of Floyd's priors and would have asked only how many prior felony convictions Floyd had." With respect to the other prior convictions as to which counsel had elicited specifics, counsel had wanted the jury to know that they were not of a sexual nature.

The Second District reviewed the record and further concluded that based on the facts of the case, Floyd demonstrated prejudice from counsel's deficient performance.

[Spurgeon v. State](#), 2D19-1279 (July 10, 2020)

The denial of a Rule 3.850 motion was reversed and a new trial was ordered. The defendant operated a child daycare center, and the victim, in a first-degree murder prosecution, was a one-year old child. After being taken home from daycare, the child was unresponsive and vomiting. Swelling in the brain was discovered, as well as bleeding on the surface of the brain. After a week of treatment, the child was removed from life support and died. Trial counsel was found by the appellate court to have been ineffective for failing to present an expert to rebut the State's theory of the cause of the swelling of the brain.

The "State theorized that the victim's injuries resulted from her being thrown repeatedly against a soft surface, like a mattress." This theory was supported by two experts. The defense suggested that the swelling and bleeding of the brain predated the defendant's care of the child and was caused by a metabolic disorder. A biomechanics expert testified for the defense and presented calculations to refute the shaken baby syndrome theory of the State. That theory had been the State's original theory, before it morphed into the theory of having been thrown against a soft surface. Other defense experts testified that the swelling and bleeding predated Spurgeon's care of the infant.

At a postconviction evidentiary hearing, the defendant presented two biomechanics experts, who both testified that based on their own research and experiments, “it would not have been possible for impact on a mattress or similar soft surface to have caused the damage to the victim’s brain.” Trial counsel did not investigate the “soft surface” theory, stating that the defense had been that the injuries predated Spurgeon’s care for the victim, and that counsel believed that there was no factual or medical support for the theory of the State’s expert.

[Horton v. State](#), 2D17-2852 (July 8, 2020)

On remand from the Florida Supreme Court, for reconsideration in light of that Court’s decision in [Love v. State](#), the Second District held that Horton was not entitled to a new Stand Your Ground immunity hearing, because the 2017 statutory amendment to the burden of proof became effective after the immunity hearing was held in this case.

[Baez-Ortiz v. State](#), 2D19-379 (July 8, 2020)

A conviction for lewd and lascivious conduct on a child by a person over the age of 18 was reversed. The trial court “erred by admitting evidence that Baez-Ortiz had previously been warned not to touch schoolchildren and had previously been reprimanded for hugging schoolchildren.”

The defendant was a school custodian and was “alleged to have rubbed the student’s leg up towards her thigh and under her skirt.” The child was in kindergarten.

The prior acts that were admitted were “completely dissimilar from the charged offense,” and were “temporally unrelated,” having occurred two or three months prior to the charged offense. Furthermore, the prior acts were not inextricably intertwined with the charged offense. The prior acts were “not necessary to describe the charged crime,” they “did not provide an intelligent account of the charged crime,” they did not establish the entire context out of which the charge crime arose,” and they “did not adequately describe the events leading up to the charged crime.” These prior acts also became the feature of the prosecution as the prosecutor’s closing argument referred to the “extensively.”

[Parravini v. State](#), 2D19-569 (July 8, 2020)

While affirming the defendant's conviction and sentence, the Second District noted that one of the sentencing issues in the case was currently pending in the Florida Supreme Court: "an issue regarding collective or individual application of the lowest permissible sentence (LPS) when that number exceeds the individual statutory maximums for the primary and additional offenses, as is the case here." The Florida Supreme Court is currently reviewing the Second District's decision on that issue in the case of [Champagne v. State](#), 269 So. 3d 633 (Fla. 2d DCA 2019), as review has been granted in a Fifth District case based on conflict between the Fifth and Second Districts.

[Strong v. State](#), 2D19-768 (July 8, 2020)

On the basis of the Second District's prior decision in [Morgan v. State](#), 45 Fla. L. Weekly D791 (Fla. 2d DCA April 3, 2020), the Court certified conflict with decision of the Fourth and Fifth Districts. The Fourth and Fifth Districts held that orders granting Rule 3.800(a) motions are final and appealable by the State and that the trial court therefore loses jurisdiction to rescind orders granting resentencing. The Second District's [Morgan](#) decision concluded that the mere granting of the 3.800(a) motion is not final until the actual resentencing; that the State cannot appeal the granting of the 3.800(a) motion prior to resentencing; and that a trial court does have jurisdiction to rescind an order granting resentencing prior to the actual resentencing.

Third District Court of Appeal

[Sexton v. State](#), 3D18-1500 (July 8, 2020)

On remand from the Florida Supreme Court, for reconsideration in light of that Court's decision in [Love v. State](#), the Third District held that Sexton was entitled to a new Stand Your Ground immunity hearing. The prior hearing had been held in 2018, after the effective date of the statutory amendment to the burden of proof, and the trial court therefore erred when it failed to apply the amended burden of proof, placing the burden on the State.

[Santisteban v. State](#), 3D19-845 (July 8, 2020)

When the defendant decided to testify, he requested the assistance of an interpreter. No request for an interpreter was made at any earlier time, and the judge

had previously communicated with the defendant in English. When requesting the interpreter, the defendant stated that although he spoke English well, Spanish was his primary language. The court engaged in a lengthy colloquy with the defendant, and concluded that the defendant understood everything that had previously transpired in the trial. The interpreter was then provided to the defendant.

The defendant argued on appeal that the trial court erred by not appointing an interpreter at the outset of the trial. On the basis of the record before the appellate court, fundamental error did not exist. The Third District rejected the defendant's argument that trial courts should determine whether an interpreter is needed in every case at the outset of the trial: "In the absence of any indication to the court that there may be a genuine language barrier, we decline Santisteban's invitation to espouse a categorical rule requiring trial courts within the Third District to inquire of every defendant regarding their need for an interpreter."

[Ryerson v. State](#), 3D19-1673 (July 8, 2020)

The trial court erred by admitting into evidence two letters the defendant sent to the trial judge admitting guilt and seeking leniency. These were inadmissible as plea negotiations. However, the error was not preserved for appellate review and the error did not rise to the level of fundamental error. Furthermore, as this claim was asserted in a direct appeal, the Third District could not find ineffective assistance of trial counsel on the face of the record. That claim was denied without prejudice to its assertion in a motion for postconviction relief.

Fourth District Court of Appeal

[Reaves v. State](#), 4D19-1796 (July 8, 2020)

The defendant was originally convicted for both robbery and burglary offenses and received consecutive mandatory minimum sentences based on the possession of a firearm. In 2018, after the Florida Supreme Court's decision in Williams v. State, the trial court found, and the State conceded, that Reaves was entitled to resentencing on the burglary charge because the firearms were merely possessed, not discharged, and the offenses were part of the same criminal episode. The mandatory minimum sentences therefore had to be concurrent.

At resentencing, the trial court corrected the mandatory minimum sentences and made them concurrent. Reaves appealed the resentencing, after the denial of a Rule 3.800(b) motion, and argued that the scoresheet was in error, because the

sentencing scoresheet listed the robbery as the primary offense and the burglary as an additional offense. Reaves argued that this was an error because the robbery offense was not before the trial court for resentencing at the time. The Fourth District disagreed. When a resentencing is ordered, it is a de novo resentencing and includes all offenses that were before the court at the original sentencing. “Otherwise, a defendant would get a windfall, because the resentencing would occur in a vacuum, without the other crimes that were taken into account in the original scoresheet.”

Fifth District Court of Appeal

[Cookston v. State](#), 5D19-2523 (July 10, 2020)

The trial court appointed an expert to determine the defendant’s competency. Defense counsel later stipulated that the defendant was competent to proceed to trial. The record on appeal did not reflect any competency hearing or order of the court finding the defendant competent. A trial court may not merely accept defense counsel’s stipulation that the defendant is competent.