Case Law Update
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Eleventh Circuit Court of Appeals

Brown v. United States, 17-15470 (Sep. 24, 2020)

The Court vacated its prior opinion in this case and granted en banc review. The issue that will be addressed en banc is whether a juror was erroneously dismissed.

First District Court of Appeal

Hill v. State, 1D18-3273 (Sep. 24, 2020)

The Court affirmed multiple convictions for drug and firearm offenses. Hill argued that the trial court "erred when it denied his motion to unseal the affidavit used to obtain the search warrant for the residence where Hill often stayed." The argument was based on the trial court's alleged failure to review the sealed affidavit in camera. This claim was not preserved for appellate review. The State had objected because the affidavit would disclosed the identity of a confidential informant.

The State asserted in the trial court that the defendant was obligated to demonstrate that the disclosure was necessary for a specific defense. Hill argued that he was not required to make that demonstration because he was not seeking information about the confidential informant. "But Hill misses the point. The State claimed that the sealed affidavit concealed so much sensitive information that redaction of the information about the confidential informant would leave the document containing only boilerplate language." Thus, Hill had the burden of demonstrating that disclosure was necessary for a specific defense. "A bare allegation that defense counsel is unable to prepare a defense without the requested information is not enough." The defense in this case had presented, in the trial court, only a general argument about the need for the affidavit, and it was not a sufficient demonstration.

Hill had further argued that he believed that the information contained in the affidavit was stale, as no sales occurred in that residence for more than 30 days prior to the execution of the warrant. That argument failed because Hill was charged with possession offenses, not sale, and Hill did not testify that he did not possess drugs at that residence.

Additionally, Hill never requested that the trial court conduct an in camera review.

One judge dissented, concluding that Hill made an adequate showing of materiality when he alleged that he did not engage in any drug-related activity at the residence in the 30 days prior to the issuance of the warrant.

Black v. State, 1D19-0590 (Sep. 24, 2020)

The First District affirmed the denial of a Rule 3.850 motion, in which Black alleged ineffective assistance of counsel and newly discovered evidence.

In one claim, Black alleged counsel was ineffective for failing to cross-examine officers regarding the hours of a liquor store. The defense strategy was to point out the robbery victim's alcohol consumption and discrepancies as to the time of the offense. Problems with the victim's timeline had already been pointed out by defense counsel and cross-examination of the officers would not change the result of the trial.

In another claim, Black alleged counsel was ineffective for failing to impeach the victim with a prior inconsistent statement. At trial, the victim stated that the robbery occurred after he left the Travel Inn, but near a liquor store. An officer's arrest report noted that the victim said that the robbery occurred at the Travel Inn. The First District concluded that these two statements were not truly inconsistent and could not be used for impeachment, as the issue of the location had no bearing on whether the defendant was the perpetrator. Nor would this have affected the outcome of the trial.

Counsel was not ineffective for failing to object to the giving of a lesser included offense instruction on robbery with a "weapon." There was evidence in the

case that a BB gun was used. Weapon is defined by statute as including certain enumerated items, as well as any "other deadly weapon." It was a question for the jury as to whether the BB gun was used in a manner capable of causing death or great bodily harm, and the instruction on the lesser offense was properly given. The victim testified that the BB gun had been pointed at his head during the robbery.

The trial court rejected the claim of newly discovered evidence, which was based on the victim's recantation, because the trial court, after an evidentiary hearing, found that the recantation was not credible. The trial court had heard testimony that the victim was forced to sign the written recantation due to threats that either the Appellant or other inmates would "jump" him.

Anderson v. State, 1D19-0677 (Sep. 24, 2020)

The trial court appointed an expert to determine the defendant's competency, and the expert found that the defendant was competent and wrote a written report. The trial court failed, however, to conduct a competency hearing and make its own determination of competency. The case was remanded for the trial court to make a nunc pro tunc determination of competency at the time of the trial or to otherwise conduct a new trial when the defendant is found competent.

Thach v. State, 1D19-3660 (Sep. 24, 2020)

The First District affirmed multiple convictions for lewd or lascivious molestation and other offenses. The trial court did not abuse its discretion in permitting the State to amend the information during trial. The four offenses at issue had initially been charged as sexual batteries – two on victims under the age of 12; two on victims between the ages of 12 and 18. There was no prejudice to the defendant, as the lesser offenses of lewd or lascivious molestation could not help but have been proven if the greater offenses were proven. The original charges alleged penetration or union with various parts of the body. The absence of evidence of penetration or union caused the State to seek the amendment of the information.

The defendant argued that the amendment prevented defense counsel from further questioning the witnesses about the manner of touching for the lewd or lascivious molestations. The First District did not see any basis for that argument

and further found that there was no prejudice because the amended charges were subsumed withing the original charges.

Second District Court of Appeal

Shuler v. State, 2D20-610 (Sep. 25, 2020)

In a Rule 3.800(a) motion to correct illegal sentence, Shuler argued that convictions for armed robbery and being a felon in possession of a firearm constituted a double jeopardy violation. The trial court dismissed the motion because a direct appeal from the convictions and sentences was then pending The Second District held that the trial court should have treated the motion as a Rule 3.850 motion, because challenges to the validity of convictions are beyond the scope of a Rule 3.800(a) motion. The pending direct appeal did not bar the trial court motion since it raised an issue that was distinct from the pending appeal. The case was remanded for further proceedings.

Third District Court of Appeal

Hudson v. State, 3D19-664 (Sep. 23, 2020)

On appeal from a conviction for burglary of a conveyance, the Third District reversed the conviction for a new trial. The trial court erred "in admitting evidence that implicated Hudson as the person who had committed several earlier burglaries of the same victim's vehicle."

Prior to trial, the defense had sought to exclude that evidence. The State agreed not to elicit it, but it was subsequently elicited from the victim on redirect examination. The evidence was collateral offense evidence. The State did not file any notice of intent to rely on Williams rule evidence and the evidence was not admissible for any other relevant purpose.

Jones v. State, 3D20-0287 (Sep. 23, 2020)

The Third District affirmed a conviction for direct criminal contempt. During the course of a hearing on defense counsel's motion to withdraw, the judge explained that counsel's reason was confidential and could not be disclosed to the defendant,

or it might otherwise result in the recusal of the judge. The defendant responded with profanity and started to exit the courtroom, in the presence of other defendants and court personnel. This "disrupted the trial court's business and, if left unpunished, would have undermined the trial court's authority."

Fourth District Court of Appeal

State v. Daley, 4D10-3590 (Sep. 23, 2020)

The Fourth District reversed the trial court's suppression order, concluding that the stop was supported by reasonable suspicion.

Officers had established a perimeter around the site of a burglary. They stopped the defendant, who was riding a bicycle. A BOLO had identified the suspect "as a black male, 5'11", wearing a grey hooded sweatshirt." The defendant was a black male, wearing a grey hooded sweatshirt, and was found to have been 5'10". The stop occurred a few blocks away from the site of the burglary. The defendant was also riding the bicycle at night, without lights, in violation of statutory regulations for bicycle riding.

Fifth District Court of Appeal

Smith v. State, 5D9-774 (Sep. 25, 2020)

At his sentencing hearing, Smith admitted to having twice sold five of his oxycodone pills to an individual who turned out to be a confidential informant. Smith stated that he did it due to financial difficulties. "[D]ue to the judge's questionable blanket policy of accepting no plea negotiations in cases involving the sale of opioids, Smith and the State were precluded from attempting to negotiate a resolution to the cases." Smith therefore entered an open plea to the court.

Smith requested a minimum sentence under the Criminal Punishment Code; the State sought a harsher sentence of five years in prison. The court imposed a still harsher sentence. The Fifth District reversed for a new sentencing hearing before a different judge because it appeared that the judge's reasons for imposing the harsher sentence were based, "in large part, on factors wholly unrelated to any evidence contained in the record."

During the sentencing hearing, the judge referred to 70,000 people having overdosed on heroin in the past year. The judge made reference to the way people obtain the pills through prescriptions, with doctors who overprescribe. The judge then referred to the manner in which doctors then cut off the patients and the patients then start buying pills on the street. The judge concluded: "What you did is what leads to that."

State v. J.J.R., 5D19-3768 (Sep. 25, 2020)

More than one year after commitment to a non-secure residential program, J.J.R. filed a motion under Rule 8.140(b)(2), seeking release from the program. The trial court granted the motion. On appeal, the Fifth District reversed, because the motion was untimely. Rule 8.140(b)(2), which applies to claims of newly discovered evidence, has a one year limitations period.