Case Law Update
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Supreme Court of Florida

Lawrence v. State, SC18-2061 (Oct. 29, 2020)

Lawrence appealed a sentence of death for first-degree murder, that was imposed at a resentencing proceeding. Lawrence argued that the sentence of death was not proportional. The State argued, and the Court agreed, that comparative proportionality review is not authorized by statute. The Court held that "the conformity clause of article I, section 17, of the Florida Constitution forbids this Court from analyzing death sentences for comparative proportionality in the absence of a statute establishing that review."

In so holding, the Court receded from prior precedent which had required such analysis in every direct appeal involving a sentence of death. The Conformity Clause of article I, section 17, was added to the Florida Constitution in 2002, and it provided that "[t]he prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution."

Eleventh Circuit Court of Appeals

United States v. Bazantes, 17-15721 (Oct. 26, 2020)

Bazantes and his codefendant, Tabares, appealed convictions for conspiring to violate, and knowingly and willfully violating, the False Statements Act, by submitting certified payroll forms containing false, fictitious and fraudulent statement to a federal agency. The two defendants were subcontractors on a construction project. The convictions were affirmed, but the sentences were reversed and remanded for resentencing.

The defendants argued that the government failed to prove the required statutory element of the offense that "the writing or document was made or used in a matter within the jurisdiction of the executive, judicial, or legislative branch of the government of the United States." The Court rejected this, construing provisions of

the Copeland Act, which adopted regulations "obligating contractors and subcontractors on federal construction projects to submit weekly payroll records."

The defendants further argued that materiality was insufficiently pled in the indictment and that it was insufficiently established at trial. The Court disagreed. The argument of the defendants contended that materiality required that the documents at issue be addressed to the decision-making body to which they were addressed. The Court construed materiality as requiring that the false statement have the "capability of affecting or influencing the exercise of a government function." The false statements covered up the manner in which workers were being paid, and that sufficed to allege that they were material to the government agency, the CDC. Similarly, the evidence was sufficient without requiring proof that the false statements actually affected the CDC's actions or decisions. Only the "capacity to impair or pervert the functioning of a government agency is required."

A sentencing enhancement based upon a calculation of loss to the government was incorrectly applied, as the government failed to prove loss to the government. The government claimed that even though pecuniary loss was not established, the falsification of the records compromised the integrity of the contract bidding process. "'Compromised integrity' does not a pecuniary loss make." Nor could the enhancement be applied, alternatively, on the basis of the defendants' "gain," as the guidelines enhancement authorizes the use of "gain" for the calculation only if there is a "loss," but the loss cannot be reasonably determined. Here, there was no loss at all.

United States v. Joseph, 19-11198 (Oct. 27, 2020)

The Eleventh Circuit affirmed multiple convictions for drug offenses.

Joseph challenged the denial of his motion to suppress the seizure of the drugs from a vehicle, arguing that an officer lied in the affidavit for the warrant when stating that he could see the drugs through the window of the vehicle. Although Joseph presented witnesses at the suppression hearing who stated that one could not see through the vehicle's windows, the officer testified to the contrary and the district court made the credibility determination to believe the testimony of the officer.

Joseph moved for a mistrial because the prosecutor referred to Joseph's use of a false identity to rent an apartment, while Joseph was not charged with an identity-theft crime. That argument was rejected because the Court concluded that the evidence of the false identity was inextricably intertwined with the narcotics

offenses. The property was leased by Joseph, and the use of the false identity was relevant to efforts to conceal the criminal activity, and was further necessary to explain how officers discovered that Joseph was renting the apartment and garage in question.

United States v. Wilson, 17-12379, 18-14680 (Oct. 27, 2020)

Wilson appealed his conviction and sentence for possession of an unregistered, sawed-off shotgun. The Eleventh Circuit affirmed.

Wilson challenged the jurisdiction of the district court, arguing that the offense occurred on dry land, and the federal offense is punishable "'only when performed on the high seas or any other navigable waterway within the admiralty/maritime jurisdiction of the United States.'" The relevant statutory provision charging the offense stated only that it is an offense to possess an unregistered firearm. The admiralty jurisdiction argument was deemed "frivolous," as the firearm statute made no reference to admiralty jurisdiction.

Wilson also challenged the constitutionality of the firearm statute under the Second and Tenth Amendments. These challenges were likewise deemed "frivolous." Prior decisions of the Supreme Court and the Eleventh Circuit were cited as having previously rejected those arguments.

Wilson challenged the sufficiency of the evidence, arguing that the government failed to prove that he knew the barrel was less than 18 inches in length, that he knew the shotgun was not antique and did not use antique ammunition, and that he knew that it had to be registered. Contrary to Wilson's argument, the statutory mens rea of knowledge does not attach to each element of the offense. It applied only to the second element of the offense, that the defendant was "aware that his weapon possess[ed] any of the features detailed in 26 U.S.C. s. 5845(a)."

The barrel was measured at 14.25 inches, which was patently obvious to anyone observing the gun. And, Wilson testified that he had no knowledge of the dimensions of the gun, but the jury rejected his testimony and apparently believed the opposite. Additionally, and ATF expert testified that the firearm was not an antique.

The Eleventh Circuit's opinion included a substantial analysis explaining why the Supreme Court's recent decision in Rehaif v. United States, 139 S.Ct. 2191 (2019), did not apply to the firearm statute at issue. Rehaif held that in certain

firearm prosecutions under 18 U.S.C. ss. 922(g) and 924(a)(2), the government must prove "'that, when the defendant possessed the firearm, 'he knew he belonged to the relevant category of persons barred from possessing a firearm,' such as his status as a convicted felon."

Wilson also challenged the denial of his motion to suppress evidence seized during an allegedly unlawful traffic stop. The Court rejected this based on evidence that an officer used a speedometer and radar gun to clock Wilson exceeding the speed limit by 16 miles; the officer's observation of a door of Wilson's vehicle being open for 20 seconds while the car was in motion; and a visual observation and test determining that the windows were darker than permitted by law. When Wilson then refused to comply with the request for his license, the officer then had a reasonable belief that Wilson was committing the offense of refusing to comply with a lawful order from an officer. This constituted probable cause for the commission of a misdemeanor under Florida law, in the presence of the officer. A jury note to the judge inquiring whether it could use its own finding that the search was illegal in its verdict did not have any relevance as to the district court's prior denial of the motion to suppress.

The ensuing search of the vehicle was found to be a valid inventory search. An officer had the vehicle towed and an inventory was then done in accordance with the police department's standard operating procedures, which permitted the towing if the operator was arrested, or, if the vehicle created a traffic hazard or was illegally parked. Both facts existed here. There was no one else to take the vehicle and it was blocking a gas pump.

The Court also rejected several challenges to Wilson's self-representation at trial and pretrial proceedings. The district court's inquiries of Wilson were sufficient. Wilson argued on appeal that his choice of whether to proceed pro se was involuntary because "the Criminal Justice Act Plan's attorneys are so under-resourced that the Plan inherently violates the Sixth Amendment right to effective assistance of counsel." This argument was not viable because "ineffective assistance is a fact-dependent claim," and Wilson did not present any factual argument as to how the Plan's attorney's had been deficient. Additionally, if there was an error from the absence of standby counsel, such error was harmless. Wilson had to demonstrate that "but for standby counsel's absence, the results of his trial would have been different." One of Wilson's factual arguments to support such prejudice was his appearance at trial in prison garb. The Court noted that Wilson, from the outset, in opening argument, had emphasized his status as one who had been held in jail prior to trial.

First District Court of Appeal

Woods v. State, 1D19-3787 (Oct. 30, 2020)

The denial of a Rule 3.850 motion, after an evidentiary hearing, was affirmed. Trial counsel was not ineffective for having failed to request a jury instruction on common law self-defense.

The instruction in question would have pertained to a person engaged in unlawful activity; that is an available defense "when a defendant admits being engaged in unlawful activity but is forced to act in self-defense." The trial court rejected the claim, concluding that the jury found that the defendant was guilty of premeditated murder and that it necessarily rejected self-defense. The First District affirmed based on a different rationale.

Woods could not demonstrate prejudice. "The jury found Woods guilty of robbery and, therefore, found Woods had criminal intent to use force in furtherance of an unlawful taking. There was an express finding that Woods carried a firearm and shot Valencia during the commission of the robbery. That is, the jury found Woods shot Valencia as part of his commission of a robbery and not in self-defense. There is no reasonable probability the jury accepted his account of self-defense but, due to the jury instructions, felt compelled to find him guilty of murder."

Second District Court of Appeal

Ryan v. State, 2D18-1338, 2D18-2664 (Oct. 30, 2020)

Ryan demonstrated a reasonable likelihood that the sentences imposed were vindictive, and the sentences were reversed and remanded for resentencing before a different judge.

At the start of trial, the judge offered Ryan concurrent sentences of three years on each offense if he entered a plea; the judge warned Ryan that if he proceeded to trial he could get up to ten years. Ryan went to trial, and, after guilty verdicts for each charge, he received consecutive sentences of three years for each offense.

The judge initiated the plea negotiations and made the offer in question, both in violation of Florida Supreme Court case law. The judge was well aware of Ryan's prior record before the trials on his two cases began, and the evidence adduced in

the two trials did not provide any explanation for the increase in the sentence ultimately imposed.

Maksymowska v. State, 2D18-4697 (Oct. 30, 2020)

The defendant appealed convictions for drug offenses and driving with a suspended license. On direct appeal, the Second District agreed that trial counsel was ineffective for failing to request a jury instruction on the prescription defense.

The defendant was stopped while exiting a parking lot. When asked for identification, she stated that she had none, and she provided a false name. A consensual search of the car resulted in the discovery of a license with a different name. After the arrest of the defendant, a search of her purse yielded a container with pills, which she said belonged to her grandmother. At trial, the defendant testified that she cared for her grandmother, who had dementia. She stated that she carried pills with her to prevent her grandmother from taking too many.

"By neglecting to request an instruction that was central to Maksymowska's case, trial counsel deprived her of her only defense."

Goesel v. State, 2D19-2730 (Oct. 30, 2020)

The defendant appealed convictions on child pornography charges and the Second District reversed. A search was unlawful because the affidavit in support of the search warrant did not establish probable cause.

An online photo from an anonymous chatroom was received by the National Center for Missing and Exploited Children and was forwarded to a Sheriff's Office. A detective concluded that the photo was child pornography. An earlier images from an IP address registered to the same location had come to the attention of detectives, who concluded that it was not pornographic.

The affidavit for the search warrant detailed the chain of transmission, as well as the prior nonpornographic image. The subsequent, allegedly pornographic image, however, was neither described nor attached to the affidavit. The affidavit stated only that the affiant determined that the image depicted child pornography.

The affidavit was insufficient because it was premised solely on the detective's conclusory assertion regarding the pornographic nature of the image. A magistrate determining probable cause may not merely ratify the conclusion of

others. The second problem with the affidavit was that it did not demonstrate that the detective had any training or experience in identifying child pornography. While the affidavit referenced prior investigations of child pornography in which the detective participated, it did not "indicate that Ellis had been involved in analyzing the legality of images or that he was otherwise trained, either in a classroom or on the job, to identify child pornography and distinguish it from legal images of simple nudity."

Doland v. State, 2D19-3310 (Oct. 28, 2020)

The Department of Corrections, when making gain-time calculations, concluded that the trial court erred in determining the amount of pre-sentence jail credit Doland was entitled to and reduced it. The Second District held that DOC did not have the authority to do that unilaterally; only the court could.

Third District Court of Appeal

Etienne v. State, 3D19-1064 (Oct. 28, 2020)

The Third District affirmed an order revoking probation and concluded that that Etienne did not demonstrate that the trial court judge was biased against him personally.

During the course of the proceeding, there were discussions as to whether Etienne should proceed with English or Creole. In the order revoking probation, the judge "expressed displeasure with defense counsel's request for an interpreter on the third day of a four-day probation violation hearing. The revocation court expressed aggravation with defense counsel's claim that Etienne did not speak English and recited those portions of the record where Etienne showed his proficiency with English."

The Third District concluded that the judge's comments throughout the hearing did not indicate any bias or prejudice against Etienne, or "any hostility towards his defense team." "Any alleged prejudice against Etienne was not directed towards him, and was not of such a degree that it adversely affected the outcome of his probation violation hearing."

Brown v. State, 3D19-1636 (Oct. 28, 2020)

The trial court erred in denying a postconviction motion raising an issue regarding the imposition of a life sentence on a juvenile. In 2010, the trial court vacated the prior life sentences and subsequently, pursuant to an agreement, imposed consecutive sentences of 30 years each on the two counts at issue.

Brown argued on appeal that he was entitled to the benefit of the 2014 juvenile sentencing statutes. The State argued that Brown waived his right to any further resentencing by virtue of his agreement to the 30-year sentences that were imposed. The Third District disagreed. This case was governed by the Florida Supreme Court's decision in Kelsey v. State, which held that "if a subsequent resentencing obtained after a Graham violation was not pursuant to chapter 2014-220, then a defendant is entitled to further resentencing specifically under the chapter, *despite* the fact that the current sentence is not itself violative of Graham."

With respect to the waiver asserted by the State, "[a]lthough bargained-for, knowing, and voluntary pleas may waive violations of fundamental rights, such as double jeopardy claims, . . ., we have afforded relief for Miller/Graham violations despite the entry of such pleas."

Fourth District Court of Appeal

Thurston v. State, 4D19-1192 (Oct. 28, 2020)

The Fourth District affirmed convictions for burglary and other offenses.

At trial, the victim testified that on the day of the offenses, the victim had seen the perpetrator at a local market talking to a man named Muff. The victim later asked Muff for the name of the individual with whom Muff had been talking, and Muff, gave the victim the defendant's full name. The defense objected to this testimony based on the Confrontation Clause and hearsay.

The testimony was not hearsay because it was not offered to prove the truth of the matter asserted – i.e., the defendant's name. "Rather, it was offered to show how the victim learned the name of the person he had seen with Muff the previous day at the market – the very same person whom the victim identified as the assailant from later the same day. Because the victim then passed this name on to the police, it also showed how the police came to learn appellant's name." Furthermore, the

victim's narrative of what Muff said did not include any accusatory statements with respect to the defendant.

The Confrontation Clause was not violated because the statement was not offered to prove the truth of the matter asserted.

During a recess from cross-examination of the victim, an intern for the defense reported having heard the prosecutor comment, in the defendant's presence, that the defense needed to go back to law school regarding the law pertaining to impeachment. A motion for mistrial was denied, although the court chastised the prosecutor for an unprofessional comment. The jury had not heard the comment. The Fourth District concluded that the denial of the motion for mistrial was not an abuse of discretion, but cautioned all attorneys regarding the obligation to "uphold the integrity of the justice system."

St. Lot v. State, 4D19-3022 (Oct. 28, 2020)

The defendant's conviction for a sex offense was affirmed and the Fourth District held that the trial court did not err by admitting child hearsay, or by excluding evidence of the mother's sexual abuse.

The parties stipulated that the child, who was four-years old at the time of the offense, was not competent to testify due to a lack of memory. The mother testified that she observed the defendant, with who she lived, lying on top of the victim, with their stomachs touching. The mother observed bite marks on the victim's chin. She testified that the victim said that the defendant pulled her into his room and that he was trying to sleep with her. The victim complained about "burning" and that the defendant poured something into her, using a Creole word for vagina. En route to the emergency room in an ambulance, and while at the emergency room, the victim made other statements, which a detective recorded.

The child hearsay statements to the mother were properly admitted. They were made quickly after the incident, with little time for fabrication. The child was shaking and in shock. There were no indicia of animosity between the victim and the defendant. Language that was used by the child was inconsistent with language that would typically be used by a child of that age. There were no indications of fantasy, embellishment or lying. The statements were further corroborated by physical evidence, including the mother's observations of what transpired, as well as bruises on the victim's thigh near the vagina, and wetness on her underwear and

dress. Sufficient indicia of reliability existed for admissibility under the statutory exception for child hearsay.

There was no showing of relevance regarding the mother's prior history of sexual abuse. The incidents had occurred many years earlier and involved unrelated perpetrators and different circumstances.

R.F. v. State, 4D20-390 (Oct. 28, 2020)

A motion to suppress physical evidence was properly denied. A deputy's use of a spotlight and flashlight to illuminate his approach towards the juvenile did not constitute a seizure under the Fourth Amendment.

At about 2:00 a.m., in a high-crime area known for numerous recent burglaries of vehicles, an officer observed a vehicle parked adjacent to an apartment building. It was not in violation of any traffic regulations. The vehicle was turned on and there were two occupants. The vehicle was not blocked by the officer. The officer approached with a flashlight and shined it into the driver's window. R.F. rolled down the window as the officer approached. The officer smelled marijuana coming from within the vehicle.

Upon inquiry, R.F. stated that he knew someone in the building. The officer told R.F. about the smell of the marijuana. R.F. said that he did not have identification, but provided his name, which the officer checked and learned that R.F. was in lawful possession of the vehicle. The officer then searched R.F. and his companion, and the vehicle, and found two firearms and a bag of marijuana in the vehicle.

The use of a spotlight and flashlight did not constitute an investigatory stop. There were no additional circumstances at that time that would have made it an investigatory stop. It did not become investigatory until the time when the officer smelled marijuana, at which point in time reasonable suspicion that a crime was being committed existed.

Fifth District Court of Appeal

Henry v. State, 5D20-794 (Oct. 30, 2020)

The summary denial of a Rule 3.850 motion was reversed, as to one of its claims, because the trial court's order did not attach records conclusively refuting the claim.

The claim in question alleged that counsel was ineffective for failing to investigate facts that would have supported defenses to the charges as to which Henry entered a plea of no contest. Henry was charged with burglary and grand theft, and alleged that money found on his person and confiscated at the time of arrest had been given to him by his father and was not taken from the premises of the victim.

None of the documents attached to the trial court's order – two charging documents, defense counsel's notice of appearance, a bond reduction hearing transcript and court action forms – conclusively refuted the claim. The transcript of the plea colloquy was not attached.

Davis v. State, 5D20-810 (Oct. 30, 2020)

A petition alleging ineffective assistance of appellate counsel was granted as to two of its claims.

Davis was charged with attempted first-degree murder. The State proceeded on a theory of attempted felony murder, but that offense was not charged in the information. The trial court therefore erred by instructing the jury on the uncharged offense of attempted felony murder, which is a separate statutory offense from attempted first-degree murder and must be separately charged. Although there was no objection to the instruction, the giving of the instruction on an uncharged offense was fundamental error, which counsel should have asserted on appeal. This was the only theory of the State's case; it was not an alternative theory.

Wilson v. State, 5D20-1343 (Oct. 30, 2020)

The trial court erred by ruling on a postconviction motion for relief while a motion to disqualify the judge was pending.