Case Law Update
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Prepared by
Richard L. Polin

Eleventh Circuit Court of Appeals

Teasley v. Warden, Macon State Prison, 19-12224 (Nov. 3, 2020)

The federal district court erred by granting a habeas corpus petition as to a state court conviction. The district court had concluded that trial counsel was ineffective for failing to move to strike a biased juror. Applying the deferential standards of review that are used for federal habeas review of state court convictions, the Eleventh Circuit found that the state-court's factfinding had been reasonable and could not be disturbed by federal courts.

During all but one of the general questions posited to the venire regarding an ability to be fair, Juror Donaldson did not respond. When counsel for a codefendant asked the venire if there was anyone who felt that he or she could not be fair in a murder trial with an alleged shooting, Juror Donaldson raised his hand; there were no follow-up questions.

The prosecutor later questioned Donaldson, who indicated that a family member had been charged with a crime; Donaldson stated that that would not affect his ability to be fair. There were no other significant questions for Donaldson, and he was not challenged, either for cause or peremptorily.

At a subsequent state-court postconviction evidentiary hearing, trial counsel stated that he relied substantially on codefendant's counsel with respect to jury selection, as the defendants were asserting a common defense. Codefendant's counsel thought Donaldson would be a favorable juror based on his gun ownership and views on guns. The defense was going to be one of self-defense, with Teasley having fired in self-defense.

The state court found that counsel had been deficient, but that there was no prejudice, as there was no demonstration that Donaldson had an actual bias. Donaldson's responses, or lack of responses, were found to have been equivocal. The federal district court subsequently disagreed with that assessment, finding that the raising of the hand by Donaldson as to the one question was all that was needed to demonstrate actual bias.

The Eleventh Circuit found that Donaldson's act of raising his hand, without more, resulted in an unclear communication. The question had asked about how the jurors "felt" about whether they could be fair; not about actual bias or prejudice. Even if the act of raising the hand could be construed otherwise, it was still "unclear which way his self-assessed partiality would have run or how it would have affected his ability to judge the case." The Court further deemed it significant that no one who observed Donaldson during the trial noted any manifestation of a lack of fairness. The Court emphasized the importance of demeanor in such analysis. Also, at the conclusion of voir dire, Donaldson, along with all other jurors, swore that he would judge the case fairly and impartially.

First District Court of Appeal

Scheel v. State, 1D19-4131 (Nov. 6, 2020)

The First District reiterated its prior holding that the trial court's error in failing to apply the correct burden of proof at a pretrial stand your ground immunity hearing is harmless when the State subsequently proves, at trial, that the defendant is guilty beyond a reasonable doubt. This issue is currently being reviewed on the merits in the Florida Supreme Court.

Williams v. State, 1D19-783 (Nov. 6, 2020)

The First District granted Williams' habeas corpus petition.

In a prior direct appeal, Williams had challenged his sentence as a Prison Releasee Reoffender, and the First District rejected his claim on the basis of the Court's own existing opinion in Wright v. State. Appellate counsel sought a written opinion and/or certified conflict with a Second District decision, Lewar v. State, which the First District denied.

The Florida Supreme Court subsequently decided that the First District's decision in Wright was wrong, in Lewar. As Williams had done all that he could to preserve the issue while Lewar was being decided in the Supreme Court, he was now granted relief, because he should have been entitled to the same relief that Lewar obtained.

The holding in the Supreme Court's Lewar decision was that "commission of a PRR-qualifying offense within three years of release from jail, rather than prison, does not satisfy the requirements" of the PRR statute.

Louviere v. State, 1D19-1481 (Nov. 4, 2020)

The First District affirmed convictions for battery and possession of a firearm by a convicted felon.

The trial court granted the State's motion to exclude evidence of the nonviolent nature of Louviere's prior convictions. Although a defendant may engage in anticipatory rehabilitation of his character and present such testimony on direct examination, this issue was not preserved for review as Louviere did not obtain a clear ruling on his objection to the exclusion from the judge. "Although the trial court twice stated that it *would* sustain an objection to any question about the nature of Louviere's prior felonies, it never had a chance to do so because defense counsel never asked the question." Nor did defense counsel ever proffer the facts regarding the nature of the prior felonies.

The trial court also limited defense counsel's cross-examination of the victim regarding her reputation for dishonesty. Such questioning is permissible when it is based on the witness's reputation within the relevant community. "Defense counsel sought to proffer the victim's testimony on her own reputation for dishonesty based on the victim's answers during her deposition about her reputation. But counsel offered no other predicate. And nothing in the record shows that the proffered reputation testimony represented a sufficiently broad segment of the community." The victim's deposition included her testimony about people telling her that they did not believe her. There was no embellishment about who the people were or what community they represented.

Second District Court of Appeal

Lachman v. State, 2D19-685 (Nov. 6, 2020)

On appeal from multiple convictions, Lachman challenged his conviction for resisting an officer without violence. He challenged the sufficiency of the evidence. The Second District affirmed because counsel invited the error in closing argument.

An officer observed the defendant bicycling. The defendant headed towards a wooded area, dropped his bicycle, and proceeded into the woods. The officer

pursued the defendant and subsequently found drugs in the defendant's possession. Defense counsel conceded guilt as to resisting an officer in closing argument.

Flight alone does not constitute sufficient evidence of resisting an officer; it must be accompanied by an order to stop. However, it appeared to the Court that defense counsel used the concession as to resisting an officer as a strategic decision to gain credibility for counsel's closing argument as to the more serious drug charges. Defense counsel had not moved for judgment of acquittal as to the resisting charge either. The affirmance was without prejudice to any claims that the defendant might pursue through postconviction relief.

Charles v. State, 2D18-517 (Nov. 4, 2020)

The Second District affirmed Charles' conviction for battery with two or more prior batteries.

The State's evidence against Charles, with respect to the current battery for which he was being tried, included three acts which could constitute a battery – pushing the victim, when she tried to retrieve the phone that Charles had just taken from her; flicking a cigarette into her hair; and grabbing her by the shoulder. Charles sought a special verdict form to require the jury to specify which act it was finding that the defendant committed for the battery. The prosecutor's closing argument referred to all three acts as batteries. The judge denied the request for the special verdict form. Charles argued on appeal that this denied him a unanimous verdict from the jury as to the battery.

The Second District disagreed. Based on the time, place, victim and nature of the acts, the acts could be considered a part of a single criminal episode. There was no significant break in time; there was a single victim; and there was a single place. It was also possible that the jury could have viewed the three acts as distinct and that some jurors might find that one act had been committed but not the others. "Because neither the State nor the trial court suggested to the jury that it could convict Charles without unanimously finding at least one of the acts constituted battery, the trial court did not err by denying Charles' request to adjust the verdict form."

Third District Court of Appeal

Robinson v. State, 3D18-31 (Nov. 4, 2020)

Robinson was convicted of first-degree murder and vehicular homicide. The charges pertained to a single victim. On appeal, the defendant argued, the State conceded, and the Court agreed, that the charge of vehicular homicide had to be vacated on the basis of the "single homicide rule."

The Third District's decision precedes the Florida Supreme Court's recent decision in State v. Maisonet-Maldonado, 2020 WL 7250995 (Fla. Dec. 10, 2020), which addresses the single homicide rule and concludes that "section 775.021 supersedes our decisions establishing the single homicide rule and that our decision holding otherwise, State v. Chapman, 625 So. 2d 838 (Fla. 1993), was wrongly decided." Maisonet-Maldonado concluded that proper analysis is based on the double jeopardy test of whether the multiple offenses have the same elements or whether they each have one or more distinct elements. The Supreme Court's case upheld dual convictions for vehicular homicide and fleeing and eluding causing serious bodily injury, where each count involved the same victim.

N.D. v. State, 3D19-835 (Nov. 4, 2020)

The Third District affirmed a withhold of adjudication and held that section 836.10(1), Florida Statutes, was not unconstitutional.

Section 836.10(1), Florida Statutes, effective July 1, 2018, criminalizes the sending of a threatening communication to another person, in any manner that would allow the person to view the threat. N.D. had been charged with sending an Instagram message to a police officer, complaining about the officer wanting to lock him up for no reason, in language laced with profanity, concluding with the statement that he was going to "give you crackas a reason to . . . lock me up! Ima blow da PD up. . . ."

N.D. argued that the statute contained neither an objective threat element nor a subjective intent and was therefore overbroad and violated the right of free speech. As the statute did not contain any mens rea, and the legislature did not clearly dispense with mens rea, the Court, applying rules of statutory construction to interpret the statute in a constitutional manner, concluded that the statute was not unconstitutional as applied. Guilty knowledge, or mens rea, is presumed to be included in the statute when the legislature does not clearly dispense with it.

Fourth District Court of Appeal

Macedo v. State, 4D19-2484 (Nov. 4, 2020)

In an appeal from a theft case, requiring the State to prove value in excess of $100, the Fourth District found that the victim's testimony as to the value of one item, a watch, which was based on an appraisal, was inadmissible hearsay. The conviction was affirmed, however, because evidence regarding the value of other items was sufficient to demonstrate value in excess of $100.

Bott v. State, 4D19-2803 (Nov. 4, 2020)

Bott appealed convictions for aggravated assault with a deadly weapon, aggravated battery with a deadly weapon, and grand theft. The Fourth District reversed because the jury made the finding that the defendant did not possess or discharge a firearm during the commission of the offenses.

The Court concluded that the verdicts were therefore inconsistent. The State argued that the jury could have found that the defendant constructively possessed the firearm. The Fourth District disagreed, because the charging document, the evidence and the jury instructions proceeded "only on the theory that appellant injured the victim using a firearm." The jury was not instructed on constructive possession.

The convictions for aggravated assault and aggravated battery were therefore reversed, with instructions to reduce them to simple assault and simple battery.

Clark v. State, 4D19-3974 (Nov. 4, 2020)

Clark's probation included a condition of a curfew between 10:00 p.m. and 6:00 a.m. His probation was revoked for having been out at 11:15 p.m. He and his girlfriend had left home to go to a store for supplies at 11:15 p.m. and were stopped by an officer at 1:40 a.m.

The Fourth District, on appeal, affirmed the revocation and found that the violation was substantial. The time period was not short and there was no emergency.

Clark also challenged the adequacy of the trial court's findings. The trial court, at different times, found the violation to be willful and material, but did not use the term "substantial." Based on dictionary definitions, the Fourth District concluded that "material" was the equivalent of "substantial," as the term "material" was used by the trial court.

Joe v. State, 4D20-1285 (Nov. 4, 2020)

The summary denial of a Rule 3.850 motion was reversed because the claim asserted was facially sufficient and the record attachments to the trial court's order did not conclusively refute the claim.

The motion alleged that at the time of the trial, a codefendant had asserted the Fifth Amendment and refuse to testify, but was now ready to testify and would provide testimony that Joe did not plan or participate in the robbery that was at issue. The trial court concluded that Joe could have obtained such testimony from the codefendant in 2013 or thereafter, when an earlier postconviction motion was denied. "The record, however, does not conclusively prove that Wilson would have provided a statement earlier or that appellant could have compelled him to provide a statement in 2013 or thereafter." "The pleading requirement for due diligence is lower than the proof needed at an evidentiary hearing to demonstrate that the recent statement meets the test for newly discovered evidence."

Fifth District Court of Appeal

Ballow v. State, 5D20-267 (Nov. 6, 2020)

The Fifth District granted Ballow's petition for writ of certiorari. The trial court denied Ballow's motion for modification of probation. Ballow sought to terminate or transfer the probation to a different county. The trial court dismissed the motion as untimely under Rule 3.800(c), concluding that the court lacked jurisdiction.

Section 948.03(2), however, permits the trial court to "rescind or modify at any time the terms and conditions therefore imposed by it upon the probationer." The case was remanded to the trial court for consideration of the motion on its merits.