Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Mayweather, 17-13547 (Mar. 17, 2021)

Mayweather and three codefendants appealed convictions for Hobbs Act extortion and attempted distribution of cocaine and methamphetamine. The Eleventh Circuit reversed for new trials. Two of the defendants were entitled to entrapment jury instructions which had been denied. Their convictions were reversed as to all charges. All of the defendants were entitled to instructions defining "official act" for the extortion charges and new trials were ordered for all of the defendants on those charges.

A defendant is entitled to an instruction on an entrapment defense if there "was sufficient evidence produced to raise the issue of government inducement." "Inducement involves more than a government-created criminal opportunity; it 'requires an element of persuasion or mild coercion. . . . [I]nducement consists of opportunity plus something like excessive pressure or manipulation of a non-criminal motive.'"

The instant case involved corruption in the state prison system, and the corrections department "suspected that corrections officers were accepting bribes to smuggle contraband into prison." The FBI was investigating. Defendants Fluellen and Williams met their burden of production of evidence as to inducement. An FBI undercover informant, Woodard, "initiated contact with Fluellen after Fluellen had an opportunity to call Woodard but did not." Woodard then made an unsolicited offer to "'take care of some things' for Fluellen simply because Fluellen informed him that he was unavailable to meet on a given day because the GDC's tactical team would be visiting another prison. Woodard told Fluellen that what Fluellen was already doing – sneaking contraband into the prison – was petty compared to what he could do on Woodard's team. Woodard also specifically referenced the financial trouble that Fluellen was in – his DUI ticket – and promised multiple times to help cover those fines as well as other personal debts." Woodard also minimized Fluellen's risk of getting caught. The number of conversations, coupled with Fluellen's initial hesitation in the first few calls, pointed "towards inducement."

Defendant Williams similarly met the burden of production as to inducement. The FBI was unaware of Williams at the onset of their investigation. Informant Woodard met with Williams and "began the meeting by making a few generous offers at lunch – he gave the defendants money for gas and assured them they could order any food or drink they wanted on his dime – which in and of itself would not be sufficient to raise a question of inducement. Woodard, however, clearly moved into efforts to pressure Williams into the crime and 'push it' on him. He stated: 'I'm gonna look out for you,' '[f]rom this day forward, you're straight,' and 'If you call me and say, hey, I'm – look, man, I got a little trouble with this and that, they you call me and that's it. [You] got a little trouble on a ticket . . . I'll pay it,' for example." Woodard manipulated Williams by appealing to non-criminal motives. Woodard also minimized the danger involved, saying that there would be no "gun play" and not "meeting in dark alleys."

As to defendant Mayweather, she initiated contact with informant Woodard upon receiving his phone number from another participant. Woodard told her that they would be moving drugs, and there was no evidence of any pressure. And, Tucker "showed up in his uniform ready for the transport. Woodard showed him the drugs and explained how the job worked. Although Woodard delivered a warning during the first drug transport that might be construed as threatening Tucker, he also gave Tucker the opportunity to back out, and Tucker declined to do so. Neither Mayweather nor Tucker satisfied their burdens of production as to an inducement for the entrapment defense.

Hobbs Act extortion, under 18 U.S.C. s. 1951, defines extortion as engaging in various acts "by wrongful use of actual or threatened force, violence, or fear, or under color of official right." "Under color of official right," in turn, "gives rise to a requirement that the defendants perform an 'official act.'" A requested instruction defining "official act" was denied and no definition was provided, but one was required, as this involved an element of the charged offense. All of the defendants in this case were corrections officers. On remand, "the district court will have broad discretion in fashioning a jury instruction that fits the facts of this case." A portion of the pattern instruction, addressed in the Court's opinion, was noted as possibly being confusing as applied to this case – the phrasing of "the requirement that the 'question, matter, cause, suit, proceeding, or controversy' at issue 'must be similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee."

First District Court of Appeal

Ellingburg v. State, 1D20-2392 (Mar. 19, 2021)

A petition alleging ineffective assistance of appellate counsel was denied. Appellate counsel was not ineffective for failing to argue that two jurors were biased. Trial counsel did not seek to strike the jurors and Ellingburg did not "allege that the trial court fundamentally erred by not striking the two jurors on its own motion." Fundamental error did not exist where it was "not shown that the jury that served was biased."

Hogan v. State, 1D20-3245 (Mar. 19, 20210

The trial court did not err by treating a petition for writ of error coram nobis as an untimely Rule 3.850 motion. The writ of error coram nobis has not been available as a method of postconviction relief since 2001.

Thomas v. State, 1D20-3396 (Mar. 18, 20210

The trial court correctly dismissed a successive postconviction motion due to a lack of jurisdiction. An earlier postconviction motion, which had been denied, was then pending appeal, and the subsequent motion involved an issue related to the issue asserted in the prior motion.

Austin v. State, 1D21-006 (Mar. 18, 2021)

The denial of a Rule 3.800(c) motion to reduce a sentence is not appealable, as the motion is directed to the circuit court's "absolute discretion."

Kirkland v. State, 1D18-4684 (Mar. 17, 2021)

On remand from the Florida Supreme Court, for reconsideration in light of Pedroza v. State, 291 So. 3d 541 (Fla. 2020), the First District held that the 40-year prison sentence imposed on Kirkland for the offenses committed when he was 15-years old, did not constitute a life sentence or its functional equivalent, which was "particularly true in light of sentence reductions available under section 944.275, Florida Statutes.. . ." The sentence was therefore not an illegal sentence for a juvenile under Graham v. Florida or miller v. Alabama.

Cobb v. State, 1D19-4324 (Mar. 17, 2021)

Cobb's sentence was reversed for resentencing. The Criminal Punishment Code scoresheet total was less than 22 points, "and the jury did not make the finding of dangerousness under section 775.082(10), Florida Statutes," that is required for the imposition of anything other than a non-state prison sanction.

Gilliam v. State, 1D20-926 (Mar. 17, 2021)

The trial court should have granted a motion for discharge under the speedy trial rule.

A warrant for Gilliam was issued in Duval County. On August 25, 2018, Gilliam was stopped by an officer in St. Lucie County. The officer learned about an extraditable felony warrant from Duval County and placed Gilliam "in custody" and searched Gilliam. The officer found drugs and drug paraphernalia on Gilliam and he was booked on the new drug charges, "but never booked" on the Duval County warrant.

Gilliam remained incarcerated in St. Lucie County for 16 months pending disposition of the new St. Lucie charges and was not booked on the Duval felony warrant until December 21, 2019, after St. Lucie County released him to Duval County authorities. The Duval County information was filed on February 3, 2020, and Gilliam moved for discharge the following day, arguing that he was lawfully arrested on August 25, 2018, and that the speedy trial period for the Duval County charges expired 175 days later, on February 18, 2019.

The First District agreed. As a preliminary matter, the Court concluded that the issue was properly before the appellate court. After the denial of the speedy trial motion, Gilliam entered a plea and reserved the right to appeal. Such reservations of rights to appeal from pleas of guilty or no contest may be made as to "dispositive" issues. The First District rejected the State's argument that the speedy trial discharge issue was not dispositive. As the information had not been filed within 175 days, "Gilliam's motion for discharge is dispositive because the State would not be entitled to the recapture period of Mr. Gilliam succeeds on the merits of this appeal."

On the merits of the speedy trial claim, the First District rejected the State's argument that Gilliam was not arrested on the Duval County charges on August 25, 2018. The officer learned about the Duval felony warrant, and, as stated in the arrest report, "placed Gilliam in custody and advised him why." "This statement shows

that the officer intended to effect an arrest under the authority of the Duval County warrant and explained that intent to Mr. Gilliam."

The existence of the post-arrest search which led to the discovery of drugs, corroborated the existence of an arrest on the Duval charges. Absent an arrest on the Duval charges, the ensuing search of Gilliam would have been an illegal, warrantless search, as opposed to a search incident to an arrest, with that arrest being for the Duval charges. It did not matter that Gilliam was not advised of the Duval warrant at his first appearance in St. Lucie County. "The fact that Mr. Gilliam was *actually* detained for the warrant" sufficed.

Daniels v. State, 1D20-715 (Mar. 16, 2021)

After the filing of an Anders brief by counsel in Daniels' direct appeal of his convictions for attempted murder, the First District wrote an opinion addressing seven issues "identified by counsel as potential errors," and affirmed the convictions and sentences.

Evidence was sufficient as to premeditation on the two attempted first-degree murder charges. As to one victim, "Daniels asked L.D. where she wanted to be buried because she was dead. He asked L.D. this question while beating her and before he retrieved his gun to shoot her." As to the second victim, "Daniels warned D.G. that if he went back inside his home, then Daniels would shoot him. Moments later, Daniels fired shots into D.G.'s home Both statements show that Daniels reflected on this actions before pulling the trigger."

The trial court did not err in instructing the jury that the defense of involuntary intoxication did not apply to lesser-included offenses. All of the lesser-included offenses were general intent offenses, and evidence of involuntary intoxication is admissible only "to show that he could not form the specific intent to commit a crime." As the lesser-included offenses were not specific-intent crimes, evidence of alleged involuntary intoxication was "not admissible to negate the intent required for those offenses," and the trial court's rulings were correct.

Second District Court of Appeal

Edwards v. State, 2D18-4590 (Mar. 17, 2021)

Multiple convictions were reversed for a new trial due to the erroneous admission of collateral offense evidence at trial. Charges being tried included

fleeing an officer, resisting an officer without violence, and possession of heroin and a controlled substance.

The State presented evidence that "Edwards or his passenger had fired gunshots at law enforcement officers." After some officers responded, another testified to having heard over the radio that "they were being shot at." The "reason the police stopped Edwards is irrelevant to the charge of fleeing or attempting to elude." "Edwards was not being tried for the shooting or any firearm offense." A "limited statement that the officer were investigating a recent incident and Edwards was a person of interest would have provided sufficient context for the charged crimes. Instead, the State went overboard presenting not only the officers' testimony about the shooting but also the radio transmission, the photos of the bullet hole in the school sign, and the firearm discovered in the vehicle."

J.W. v. State, 2D19-1262 (Mar. 17, 2021)

J.W. appealed after the entry of a plea of nolo contendere to charges of resisting arrest with violence, battery on a law enforcement officer, and driving without a license. The trial court "committed fundamental error by accepting his pleas to the felony offenses in the absence of a legally sufficient factual basis."

Defense counsel stipulated to the police report affidavit as the factual basis for the plea. That affidavit referenced J.W. driving while not having a valid license. J.W. was issued a citation and notice to appear for that violation. EMS personnel were present at the scene, "evaluating" J.W.'s, "medical issues," but no further explanation was provided. Discussions regarding a possible Baker Act evaluation were noted. J.W. "made it clear that he would not voluntarily submit to the examination." When informed that he needed to get on the EMS stretcher, he refused. When an officer used his hands to forcefully handcuff him, J.W. resisted and kicked the officer in the leg.

The State argued that the facts suggested that the officer was performing the legal duty of placing J.W. in custody under the Baker Act. However, the affidavit did not document any mental impairment exhibited by J.W. And, although the affidavit referenced J.W.'s wife advising an officer that J.W. had been taking excessive medication and drinking alcohol, this statement did not indicate that J.W. posed "a real and present threat of substantial harm to his . . . well-being" that could not "be avoided through the help of willing family members. . . ." Additionally, "behavior that occurred after the initiation of the involuntary commitment for treatment cannot form the justification for that same involuntary commitment." Nor

can such concerns serve as the basis for the officer's legal duty "if the concern for J.W.'s well-being did not arise until after J.W. resisted the officer's attempts to physically restrain him."

Third District Court of Appeal

Parks v. State, 3D20-1418 (Mar. 17, 2021)

Parks filed a habeas corpus petition, challenging his conviction and sentence for second-degree murder, burglary and attempted armed robbery. After he was sentenced pursuant to a negotiated plea, he testified in a deposition as a cooperating witness against his accomplice, He alleged that he was deprived his Sixth Amendment right to counsel at that deposition and that this constituted a manifest injustice, warranting habeas corpus relief.

At the deposition, Parks requested counsel. The parties recessed the deposition to advise the court of the issue, but ultimately proceeded without counsel. Parks was reluctant and combative during the deposition, repeatedly claiming little memory of the events surrounding the homicide. As a result of his lack of cooperation at the deposition, the trial court found him in breach of his obligation under the plea agreement to cooperate and testify in accordance with his own pretrial statement. He appealed the resentencing order, arguing the denial of his right to conflict-free counsel. The Third District reversed; counsel was appointed on remand, and Parks was again found in violation of the plea agreement and sentenced to a term of life, as opposed to the original 25-year sentence. A subsequent direct appeal, and numerous postconviction proceedings, all resulted in a denial of relief to Parks. The current petition sought to revisit the issue based on a theory of a manifest injustice.

While observing that the term "manifest injustice" "eludes judicial consensus or precise definition," the Court recognized the following definitions: "'manifest injustice' is an 'error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds.'" And, "the error must be 'apparent to the point of being indisputable.'"

After reviewing extensive case law regarding the right to counsel, the Court concluded that Parks "has failed to demonstrate the deposition constituted both a critical stage in the proceedings and a point at which the denial of counsel 'affected-and contaminated- the entire proceedings.'"

One judge dissented, concluding that habeas corpus was not a viable remedy to pursue. The case should have proceeded through a rule 3.850 motion, and the mere incantation of the words "manifest injustice" did not establish an exception to the procedural bars that would exist for a rule 3.850 motion.

Fourth District Court of Appeal

Zurz v. State, 4D18-3269 (Mar. 17, 2021)

After appointing an expert, the trial court failed to hold a competency hearing. The court noted that it had the report and that the report found Zurz competent to proceed. The Fourth District reversed for further proceedings because the court failed to conduct an adequate hearing and failed to enter a written order with the court's findings as to competency.

Fifth District Court of Appeal

Tapp v. State, 5D20-630 (Mar. 19, 2021)

After appointing experts to determine competency prior to the sentencing hearing, there were no further proceedings. Absent "any evidence that the trial court conducted a competency hearing or independently adjudicated Appellant competent before proceeding with sentencing," fundamental error existed. The case was remanded for further proceedings.