Case Law Update
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Supreme Court of Florida

Woodbury v. State, SC19-8 (Apr. 15, 2021)

The Supreme Court affirmed a conviction for first-degree murder and sentence of death.

The trial court did not err by permitting Woodbury to represent himself at trial. Woodbury argued that the trial court "knew of Woodbury's history of bipolar disorder and observed instances of erratic behavior from Woodbury in court." As a result, Woodbury argued that the trial court should have denied his request for self-representation and should have conducted a competency hearing before proceeding further.

The Supreme Court observed that "Woodbury filed motions on his own behalf, was consistently alert, demonstrated knowledge of legal issues, behaved appropriately, and stated multiple times that he understood the proceedings. At no time did the trial court, Woodbury's standby counsel, or the attorneys for the State express any concerns about Woodbury's competency." There was "no evidence of wildly irrational recent behavior." The conduct cited by Woodbury, at most, suggested "attention span problems or overconfidence; nothing put the court on notice that Woodbury had a present inability to understand the proceedings or to consult with counsel." As a result, there was no basis for requiring the trial court to conduct a competency hearing.

There was likewise no error in granting the request for self-representation. A full Faretta inquiry was conducted. Offers of counsel and additional Faretta inquiries were conducted about a dozen times during the proceedings. For reasons similar to those for which the competency-hearing argument was rejected, the Court concluded that there were no indicia in the record that would have "required the trial court to find that Woodbury suffered from severe mental illness to the point of being incompetent to conduct the proceedings by himself." Reviewing the record as a whole, the Supreme Court further concluded that "the record reveals several instances where Woodbury's pro se representation could easily be mistaken for the

work of a veteran trial attorney." The Court's opinion details a portion of Woodbury's voir dire to demonstrate this.

During the defense-case-in-chief, Woodbury told the jury that he was, in fact, guilty of first-degree murder and he entered an open plea to the court. On appeal, he argued that the court should not have accepted that plea because he was not mentally competent and because of the lack of a factual basis for the plea. The Supreme Court disagreed. When Woodbury said that he was entering a guilty plea, the court conducted a thorough colloquy. And, the factual basis of the plea consisted of the State's case, which included corrections officers who responded to Woodbury's assault on the victim and described it as "methodical" and planned out. A video showed Woodbury with "weapons and hand" and showed that "he brutally attacked the victim several times *after* the victim had been completely incapacitated."

There was no error in failing to renew the offer of counsel at the start of the defense case-in-chief or at the announcement of the change of plea. The start of the defense-case-in-chief did not start a new critical stage of the proceedings. And, as of the time of the announcement of the change of plea, "there was no intervening stage of the proceeding that separated the court's previous *Faretta* inquiry from Woodbury's announcement of his change of plea." "On the previous day of trial, Woodbury told the court that he intended to change his plea to guilty when he finished testifying, and the court held a *Faretta* inquiry at the start of the next day of trial. The court also conducted a full *Faretta* inquiry and made a renewed offer of counsel before *accepting* Woodbury's plea."

For reasons similar to those in the previous issues, the Court found that Woodbury was competent to waive his right to present mitigating evidence; a *Faretta* inquiry was held at the s tart of the penalty phase. The history of the bipolar disorder was not a ground, in and of itself, for the court to believe that Woodbury was not competent to waive his right to present mitigation. And, the waiver of mental health mitigation was a matter of strategy. Woodbury wanted to emphasize "his alleged sexual assault by the victim, and he said, 'I don't want to really mess that up with oh, he was a bad kid.'"

The trial court erred by applying the wrong test for determining the existence of the extreme mental or emotional disturbance mitigator. The court stated that "[t]here is no evidence that [Woodbury]'s emotional state was anywhere close to the level of obviating his knowledge of right and wrong." Distinguishing between right and wrong is applicable to a different mental health mitigator, not the one that was

at issue here. Nevertheless, the court assigned weight to the mitigator, noting that "there is no evidence of emotional disturbance." The mitigator was therefore considered, and, given "extremely weighty" aggravators that were proved, there was no reasonable possibility that the sentence would have differed had the trial court used the proper analysis for this mitigator or assigned it greater weight.

The CCP aggravator was supported by the evidence. Although Woodbury, in the penalty phase, described the killing as being in response to an attempting rape, the Supreme Court characterized his testimony as being the murder of his cellmate for "getback," an act of "vengeance," just wanting to "hurt" the victim for what the victim tried to do to Woodbury.

There was no error in not granting a specially requested jury instruction on "mercy." Standard Instruction 7.11 is an instruction on mercy and it was sufficient.

Eleventh Circuit Court of Appeals

United States v. Russell, 19-12717 (Apr. 15, 2021)

The district court erred by denying a pro se motion for sentence reduction. Russell was sentenced for the offense of possessing with intent to distribute 50 grams or more of crack cocaine and was sentenced to 262 months' imprisonment.

The 2010 Fair Sentencing Act addressed disparities in sentences between crack and powder cocaine offenses. The 2018 First Step Act gave district courts the discretion "to apply retroactively the reduced statutory penalties for crack-cocaine offenses in the Fair Sentencing Act to movants sentenced before those penalties became effective." A subsequent one-paragraph pro se letter by Russell was construed as a motion requesting a sentence reduction under the First Step Act. The government responded that Russell was ineligible for relief because the maximum penalty for an offense involving 441.2 grams of crack, as in Russell's case, remained the same under the Fair Sentencing Act. The district court found that Russell was not eligible for a sentencing reduction.

The Eleventh Circuit concluded "that the district court had the authority to reduce Russell's sentence because he had a conviction for a covered offense under the First Step Act." Due to ambiguities in the record as to whether the district court understood that it had such authority, the case was remanded to the district court for further proceedings. Russell's offense, possessing with intent to distribute 50 grams or more of crack cocaine, qualified as a covered offense. Russell had not already

"been sentenced "'as if' the Fair Sentencing Act had been in effect because he did not receive the lowest statutory penalty available under the Fair Sentencing Act for his offense." Although the district court had authority to reduce the sentence under the First Step Act, the court was not required to do so. The Eleventh Circuit, on the basis of the lower court's final order, was unable to "discern whether the district court denied a sentence reduction based on a determination that Russell was ineligible for a sentence reduction under the First Step Act or on a choice not to exercise its discretion despite his eligibility." In the district court's order denying reconsideration , it "explained that Russell had admitted his offense involved 441.2 grams of crack cocaine, which meant that he would have faced the same statutory penalties even if he had been indicted after the Fair Sentencing Act went into effect." The district court also stated that Congress did not "intend[] to give Defendant and others similarly situated . . . the benefit of a sentence reduction."

One judge concurred in the result but disagreed with the manner in which the majority recharacterized the pro se letter from Russell. The concurring judge believed that the district court abused its discretion in treating the letter as a motion for sentence reduction; it should have been treated only as a letter requesting assistance of counsel for preparation of a motion to reduce the sentence.

In re Courtney Wild, 19-13843 (Apr. 15, 2021) (en banc)

In an en banc opinion, the Court addressed the claims of Wild, one of 30 women who alleged they were victims of sex trafficker and child abuser Jeffrey Epstein. The women filed a mandamus petition, asserting "that when federal prosecutors secretly negotiated and executed a non-prosecution agreement with Epstein in 2007, they violated her rights under the [Crime Victims' Rights Act] – in particular, her rights to confer with and to be treated fairly by the government's lawyers." The Court denied the mandamus petition that had been filed.

"While the CVRA permits a crime victim like Ms. Wild to 'mov[e]' for relief within the context of a preexisting proceeding – and, more generally, to pursue administrative remedies – it does not authorize a victim to seek judicial enforcement of her CVRA rights in a freestanding civil action. Because the government never filed charges against Epstein, there was no preexisting proceeding in which Ms. Wild could have moved for relief under the CVRA, and the Act does not sanction her stand-alone suit."

In addition to the Court's majority opinion, there are multiple concurring and dissenting opinions.

First District Court of Appeal

McArthur v. State, 1D19-3491 (Apr. 16, 2021)

The First District affirmed a conviction for first-degree premeditated murder.

The trial court did not abuse its discretion in denying a motion for mistrial. A photograph of the defendant "crouching in hunting gear and pointing a shotgun (not the murder weapon) accidentally flashed on the screen during trial and was before the jury for a second or two. Upon objection, the court gave a requested cautionary instruction to the jury. Other admissible photos had already shown the jury that the defendant owned firearms, and some showed her in camouflage "holding or shouldering firearms. Taking these factors together, the trial court's decision that the photo wasn't so prejudicial as to vitiate the entire trial cannot be considered erroneous."

Statements made by the defendant to the police prior to Miranda warnings were properly admitted. The pre-warning questioning was not an interrogation; it was "a conversation between McArthur and the two investigators [which] progressed from casual talk into an interrogation." The opinion does not quote or detail the initial, pre-warning conversation.

Gibson v. State, 1D19-4294 (Apr. 16, 2021)

The First District affirmed convictions for attempted first-degree murder and other offenses. The trial court did not err in admitting a prior consistent statement.

At trial, Gibson suggested "the victim fabricated Mr. Gibson's involvement. Mr. Gibson suggested the victim sought revenge for an incident that occurred months after the charged conduct but before the trial. To address the suggestion of recent fabrication or improper motive, the State then elicited testimony from a detective who said the victim made consistent statements about Mr. Gibson's involvement immediately after the incident while still in the hospital being treated for his injuries." "Here the detective testified to a prior consistent statement that was offered to rebut a charge of improper motive or recent fabrication and the statements declarant was subject to cross examination at trial. This was a classic prior consistent statement. It was not hearsay."

Coleman v. State, 1D17-3977 (Apr. 14, 2021)

The First District withdrew its prior opinion, substituted the current opinion, and affirmed convictions for two counts of sexual battery. An argument that the trial court failed to make "specific factual findings in concluding that the [child] victim's hearsay statements were trustworthy and reliable" was not preserved for appellate review.

At a pretrial hearing, the court "referenced the circumstances surrounding the first conversation, with the victim's godmother, found them to sufficiently indicate reliability . . . and ruled that it would allow these statements to be admitted. The trial court stated that it would review the recorded interview with the child protective coordinator before ruling on that notice. The trial court then entered an order admitting the recorded-interview statements, which referenced the factors mentioned in [State v.] *Townsend* and section 90.803(23)(1)1. The Court concluded that the argument regarding the absence of sufficiently detailed and specific factual findings was not placed before the trial court.

One judge authored a concurring opinion, which included further details from the proceedings. Another judge dissented.

Third District Court of Appeal

Valdes v. State, 3D19-0570 (Apr. 14, 2021) (on rehearing)

The Court withdrew its prior opinion, substituted the new one, concluded that Valdes was not entitled to a new Stand Your Ground hearing, and certified conflict with Nelson v. State, 295 So. 3d 307 (Fla. 2d DC A 2020).

Valdes was convicted for aggravated battery, a lesser included offense of the original charge of attempted second-degree murder. At his pretrial immunity hearing, the court applied the pre-2017 burden of proof, requiring the defendant to bear the burden. During the pending appeal, the Florida Supreme Court issued its opinion in Love v. State, holding that the 2017 statutory amendment to the burden of proof, placing the burden on the State, applied to all immunity hearings held after the effective date of the statutory amendment. Valdes argued that he was entitled to a new immunity hearing, with the State bearing the burden, consistent with the Supreme Court's decision in Love.

As this case proceeded to trial, and a jury found that the defendant was guilty by proof beyond a reasonable doubt, the Third District held that the trial court's error with respect to the burden of proof was cured. The Third District aligned itself with other districts that have come to the same conclusion. As the Second District has come to a contrary conclusion regarding whether a jury verdict cures the application of the erroneous burden at the pretrial immunity hearing, the Third District certified conflict with the Second District.

Fourth District Court of Appeal

Herman v. State, 4D19-1636 (Apr. 14, 2021)

The Fourth District affirmed a conviction for first-degree murder.

Herman argued that the trial court erred in denying a motion to exclude testimony from an expert for the State that the case is a "relatively typical example of sexual homicide," based on the "events that led him to that conclusion." "The defendant argued the State expert's opinion was not supported by the evidence and not based on recognized literature in his field. The trial court deferred ruling until the trial." At trial, when the witness testified, the only defense objections were based on speculation and hearsay. As the pretrial ground for the objection was not reiterated after the court deferred ruling, the issue was not preserved for appellate review.

The defendant requested a special jury instruction after being precluded from admitting his recorded statement to the police. This instruction would have advised the jury that courts are bound by the evidence code and that out-of-court statements of the defendant are generally considered hearsay and are "inadmissible in evidence unless the opposing party seeks to have those statements admitted." Herman argued that "the recorded statement was required to prove his affirmative defense because it showed remorse, a key factor in the published literature for determining whether the defendant was sleepwalking."

Any error in not giving this instruction was harmless. First, it did not address the theory of the defense, insanity; it addressed only the preclusion from introducing the statement. Second, the standard instruction on insanity properly explained the burden of proof.

Cannon v. State, 4D19-2082 (Apr. 14, 2021)

Cannon appealed convictions for burglary of a conveyance with a battery, and leaving the scene of a crash. The Fourth District reversed the burglary conviction for a new trial, and affirmed the other conviction. The reversal was based on fundamental error for "not instructing the jury on the battery element of the burglary of a conveyance with a battery charge."

The offense of burglary is enhanced to a higher degree when the defendant commits a battery during the burglary. Although the proposed instructions in this case included the standard language defining the elements of battery as part of the burglary instruction, that language was apparently inadvertently omitted from the final written and oral versions of the instructions. Counsel did not object to this omission.

The omission constituted fundamental error. Battery was an element of the enhanced burglary charge and that element "was in dispute and was pertinent to what the jury had to consider in order to convict the defendant of burglary of a conveyance with a battery. As the state argued, the alleged battery was the defendant's alleged grabbing the victim's shirt and yanking him out of his car – an act which the victim said occurred, but which the independent witness could not verify because his view was blocked at that moment. Defense counsel's closing argument emphasized the lack of independent verification."

The Court distinguished cases in which the omitted portion of the burglary instruction pertained to the definition of the underlying offense that the burglar intended to commit. The instant case involved a combined offense – burglary with a battery.

Defense counsel's silence did not constitute affirmative agreement with the improper instruction. There is a difference between affirmatively agreeing and unknowingly acquiescing. The issue was therefore not waived.

The defendant failed to preserve the argument that "the trial court erred in permitting the responding officers to comment on the defendant's silence by testifying that, pre-arrest, he left the hospital without being interviewed, contrary to their instructions." Even if there was a comment on silence, comments on silence are not considered fundamental error; the issue was therefore unpreserved. The Fourth District did note that the trial court's pretrial ruling on a motion in line to exclude such testimony had been correct. However, if the pretrial ruling in limine

is violated, "defense counsel must renew the motion in limine or otherwise object to preserve the issue for appeal."

A responding officer was erroneously permitted to present hearsay testimony "about the BOLO which he received from dispatch and the defendant's driving record which he obtained through the NCIC database." The testimony was cumulative and therefore the error was harmless.

Two comments in closing argument, for which there were no objections, did not constitute fundamental error. In the first, the prosecutor stated that a responding officer arrested six days after the incident and cited the defendant for having committed driving while license revoked and open container on the day of the arrest." The officer, in fact, had not testified about the additional citations given to the defendant. The misstatement did not rise to the level of fundamental error, as the jury was already aware that the license had been revoked. And, the jury was also aware, from other testimony, that the defendant had been cited for an open container on the incident date. A reference to a second, non-existent citation for that same offense, was improper, but not fundamental error.

In the second, the prosecutor stated: "Defense Counsel never got up here and impeached them. He never said, well, you said this, it is different, it is inconsistent. That never happened." This comment did not refer to the defendant's failure to produce evidence. Consistent with standard jury instructions, it "merely asked the jury to consider whether the state's witnesses, during defense counsel's cross-examinations, were honest and straightforward, and had not made a statement inconsistent with the testimony given from court, i.e, had not been impeached."

Sinclair v. State, 4D19-2815 (Apr. 14, 2021)

The Fourth District affirmed a conviction for first-degree murder and held that the trial court properly denied a motion to suppress Sinclair's statements to a detective.

Sinclair was questioned by a detective on three separate occasions, each, several weeks apart. The trial court suppressed the second of the statements, made on March 9, 2016, concluding that they were part of a custodial interrogation and were made without Miranda warnings. During the March 9th questioning, the detective repeatedly denied Sinclair's requests to leave. The final interrogation, occurred on May 12, 2016, and the Fourth District held that the failure of the

detective to honor Sinclair's "invocation of his right to silence on March 9th did not carry over to the May 12th statement."

The May 12th statement was initiated by Sinclair, who requested to speak to the defendant. Sinclair received Miranda warnings and executed a written waiver. "During the interview, he never asked that questioning stop and never asked for a lawyer." Any possible taint from the prior March 9th interrogation was handled by the trial court when it suppressed the March 9th statement.

Powers v. State, 4D19-2934 (Apr. 14, 2021)

Powers received a 15-year prison sentence for DUI manslaughter and his sentence had previously been reversed for a de novo resentencing. In his appeal from the resentencing, he argued that the trial court erred in imposing a 15-year sentence without a probationary component. The Fourth District agreed.

The offense for which Powers was convicted was a second-degree felony, with a 15-year maximum sentence. "However, when a defendant is convicted under section 316.193, '[t]he court *shall* place all offenders convicted of violating [that statute] on monthly reporting probation and *shall* require completion of a substance abuse courts. . . .'" See s. 316.1935(5), Florida Statutes. And, pursuant to decisional law, the combined terms of imprisonment and probation can not exceed the statutory maximum of 15 years.

The Court rejected the State's argument that there was a conflict between the general sentencing statute, s. 775.082, which provided the 15-year maximum, and the provisions of section 316.193, which referenced the mandatory reporting probation, and which also referenced s. 775.082. The Court rejected that argument based upon both the plain language of the language in s. 316.1935(5), as well as principles of statutory construction.

The Court remanded for a further de novo resentencing and certified a question of great public importance to the Florida Supreme Court:

> DOES SECTION 316.1935(5)'S REQUIREMENTS OF "MONTHLY REPORTING PROBATION" AND COMPLETION OF A SUBSTANCE ABUSE COURSE VITIATE A TRIAL COURT'S DISCRETION TO IMPOSE THE MAXIMUM FIFTEEN-YEAR PRISON

SENTENCE PROVIDED IN SECTION 775.082, FLORIDA STATUTES?

The Court also addressed an error in the written judgment which implicated distinctions between two subsection of section 316.193: ss. 316.193(1) and 316.193(3). Powers was charged with one count of DUI manslaughter – UBAL, under ss. 316.193(1)(b) and 316.193(3)()(b)(c)3a., Florida Statutes. He pled guilty, but the written judgment listed the two sections as 316.1931)(a) and 316.193(3)(a)(b)(c)3a. Powers argued that the judgment should have listed only one of the two provisions – 316.193(3)(a)(b)(c)3a. The Fourth District agreed. A defendant may not be convicted of both subsections (1) and (3) for a single offense. As DUI causing injury is a discrete crime, and not a mere penalty enhancement, the correct conviction in this case was the offense under subsection (3) of s. 316.193.

Colarte v. State, 4D20-111 (Apr. 14, 2021)

The trial court erred in imposing $50 in investigative costs, where investigative fees were not requested by the State and the State failed to introduce any evidence to support the assessment. Additionally, the assessment of $200 for prosecution costs was reduced to $100, absent notice from the State of the greater costs or proof of the greater costs.

A.E. v. State, 4D20-1338, 4D20-1339 (Apr. 14, 2021)

An adjudication of delinquency in one of two cases was affirmed, but one finding of violation of probation in the second case, for failure to complete hours of community service, was reversed because the State presented only hearsay evidence and a violation of probation may not be "exclusively based on hearsay evidence." At the revocation hearing, the probation officer testified about the failure to complete the 75 hours of service, but acknowledged that "she had no personal knowledge of any events prior to January 28, 2020, and that her testimony was based on her review of A.E.'s file. The file was not moved into evidence, and no further evidence was presented concerning the violation."