Case Law Update
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First District Court of Appeal

Williams v. State, 19-498 (Mar. 31, 2021)

On rehearing, the First District withdrew its prior opinion and issued a new opinion "to clarify our analysis of why a judgment of acquittal should have been entered on the principal-to-murder charge."

The revised opinion includes an extensive review of the historical development and meaning of the terms aiding and abetting, accessory after the fact, and the law regarding principals to an offense. Although the Court then rejected Williams' argument that words alone could not constitute criminal conduct within the terms of the aiding and abetting statute, the State nevertheless failed to present a prima facie case that Williams was a principal to murder. "Her only ostensibly culpable conduct, as demonstrated by the evidence (e.g., consideration of ways to kill Mike, development of an alibi, *agreeing* to encourage Mike to go hunting with Brian), did not constitute commanding or impelling Brian to commit the murder (the equivalent of accessory before the fact) or the assisting or encouraging of Brian as the scheme to murder Mike unfolded (the equivalent of second-degree principal)."

Brian had testified, and described the discussions he and the defendant had over many months about plans to kill Mike, "before deciding to make Mike's death look like a hunting accident." He stated that the defendant had liked his idea about the hunting accident. When the day came, Mike called Brian and said he could not go hunting, because his wife would not let him. She later told Brian that she got cold feet at the last minute. Brian later made plans directly with Mike for a hunting trip. The defendant was not present for those conversations, plans or the ultimate murder. Brian testified that the defendant's involvement was limited to coming up with an alibi for herself and making sure that Mike went on the trip.

"While Brian characterized the planning of the murder as 'very mutual,' he also stated that he 'planned a lot of it' and that he 'instigated a lot of it.' Brian never testified about anything Denise did or said to incite or encourage him to commit the murder. Brian's testimony showed that Denise mostly agreed with the idea of killing Mike."

Lowery v. State, 1D19-4174 (Mar. 31, 2021)

The First District affirmed the denial of a postconviction motion which alleged newly discovered evidence. Johnson confessed to multiple charges arising from burglaries, including a home invasion robbery as to which there were witnesses. In the postconviction motion, the defendant's mother recanted prior statements made to the police, claiming they were coerced; she now said that her other son was involved in the burglaries. She did not come forward with the recantation until her other son died.

An evidentiary hearing was held, and detectives contradicted the testimony of the defendant's mother. The lower court's credibility determinations were entitled to great deference on appeal, and they were supported by competent, substantial evidence.

Dorsey v. State, 1D20-0378 (Mar. 31, 2021)

On direct appeal, a challenge to the sufficiency of the evidence as being solely circumstantial was rejected in light of the Florida Supreme Court's abandonment of the reasonable hypothesis of innocence standard of review in cases where the evidence was entirely circumstantial. See Bush v. State, 295 So. 3d 179 (Fla. 2020). The reviewing standard, now applicable to all cases on appeal, is whether "a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt."

Garmon v. State, 1D20-1048 (Mar. 31, 2021)

The First District affirmed convictions for armed burglary and other offenses. The trial court did not abuse its discretion "by preventing [Garmon's] mother from testifying that the victim made a prior statement that was inconsistent with the victim's trial testimony." Garmon sought to "impeach the victim by eliciting testimony that the victim told his mother that the state attorney's office threatened to have the victim's children taken away if the victim did not testify against Appellant, which was inconsistent with the victim's cross-examination testimony that she had not been threatened and never had any conversation with Appellant's mother."

The First District found that even if this had some relevancy, the trial court properly excluded the evidence insofar as its probative value was substantially outweighed by the danger of confusing the issues, unfair prejudice, or misleading

the jury." Alternatively, based on the totality of the evidence, the any error was deemed harmless.

Anderson v. State, 1D20-2055 (Mar. 31, 2021)

The First District denied a petition alleging ineffective assistance of appellate counsel.

In one claim, Anderson argued that appellate counsel failed to raise three claims of state law violations as violations of federal law as well, contending that the failure to do so precluded him from raising those issues in a subsequent habeas corpus petition in federal court. The First District rejected this, stating, inter alia, that "[t]o exhaust state remedies and preserve a claim for federal review, a defendant need only present the substance of a federal constitutional claim to the state courts. . . . Because his counsel's failure to raise the federal claims on direct appeal does not hamper his ability to seek relief in federal court, Anderson has not shown prejudice and cannot prevail on this claim."

In another claim, the First District concluded that the trial court properly denied a motion to suppress pretrial and in-court identifications of Anderson by Duncan. Duncan described the shooter, but twice failed to pick Anderson out of a photo lineup. In a third lineup, Duncan picked Anderson out. Duncan "admitted that he lied when he said he could not identify the shooter from the [prior] lineup and that he knew who the shooter was the whole time." The photo used by the detective had Anderson wearing a red hat, which matched Duncan's previous description of the shooter. "Duncan had a brief chance to see a picture of Anderson in a red hat. Even so, he testified that he could have identified Anderson all along and lied when he said he could not. Thus, the trial court did not err in denying the suppression motion because Duncan's failure to identify Anderson in the photographic line-up affected only the weight to be given to his pretrial and in-court identifications of Anderson, not their admissibility."

Givens v. State, 1D20-3041 (Mar. 30, 2021)

The First District affirmed the summary denial of a Rule 3.850 motion, in which Givens raised four claims of ineffective assistance of trial counsel.

At trial, defense counsel, according to Givens, agreed with the State's motion in line that "evidence that the victim was pregnant when the offenses occurred and that the victim contracted a sexually transmitted disease from Givens" was

inadmissible under Florida's Rape Shield Law. Givens' defense at trial was based on allegations of consensual sex. The Rape Shield Law "bars introduction of evidence of specific instances of prior sexual activity between he victim and 'any person other than the offender.' Contrary to Givens' argument, the parties stipulated before trial that Givens was **not** the father of the victims' child. Because a person other than Givens was the father of the victim's child, the trial court properly excluded evidence of the victim's pregnancy. . . ." Additionally, there was not prejudice, as the jury knew "that Givens and the victim engaged in consensual intercourse in the days before the incident."

One claim of ineffective assistance of counsel, which was raised in the trial court motion, was not asserted in the brief of appellant, and was therefore deemed abandoned.

Counsel was not ineffective for failing to call two witnesses to testify. Their testimony "would have been cumulative because two other witnesses . . . testified that Givens had moved in with the victim at the time of the offenses. And it is unlikely that [their] testimony would have changed the outcome of the trial." Furthermore, based on the strength of the evidence at trial, even if Givens "had been able to show prejudice, there is no reasonable possibility that counsel's failure to call the two witnesses contributed to the verdict."

Second District Court of Appeal

Owens v. State, 2D20-537 (Mar. 31, 2021)

After entering a guilty plea, Owens challenged the denial of his suppression motion. Owens pled guilty to the offense of possession of methamphetamine. He argued that the "search of his vehicle was based solely on the odor of marijuana and that because possession of marijuana in some instances, and hemp in all instances, has been legalized in Florida, the odor of marijuana can no longer serve as the basis for probable cause to search a vehicle because the odor of marijuana cannot be distinguished from that of hemp." The Second District disagreed.

The Second District expressly disapproved of a published circuit court opinion and held "that an officer smelling the odor of marijuana has probable cause to believe that the odor indicates the illegal use of marijuana." Probable cause in this case was also based on Owens' "odd and erratic responses to the officer's attempts to communicate with him," where the officer responded to a complain of reckless and erratic driving.

The Court noted the possibility that an "occupant of a vehicle may have legitimate explanation for the presence of the smell of fresh (not burning or burnt) marijuana in the vehicle, such as where the individual has a lawful prescription for it, or that the substance is, in fact, hemp." However, "without affirmative holding, that such a circumstance . . . might provide an affirmative defense to a charge of a criminal offense, . . . it would not prevent the search. Nevertheless, we can think of no circumstance where an affirmative defense might lie where the impetus for the search arose from the smell of burnt marijuana in a vehicle."

Third District Court of Appeal

Hall v. State, 3D17-2058 (Mar. 31, 2021)

The Third District affirmed convictions and sentences for first-degree murder and other offenses, and addressed the sentence imposed on Hall, who was a juvenile at the time of the commission of the offenses. He was sentenced to a prison term of 50 years, which included a minimum mandatory term of 40 years.

Hall challenged the constitutionality of the 40-year mandatory minimum sentence imposed under section 775.082(1)(b)1, Florida Statutes. He argued that Miller v. Alabama and Florida v. Graham held "that any sentence that is mandated derogates from a juvenile's right to be punished only after the court has, in its discretion, considered several mitigating factors involving his youth and circumstances. The Third District disagreed.

"Section 775.082(1)(b)1, in compliance with Miller and Graham, requires a judge to consider a list of non-exhaustive factors regarding the juvenile's character and circumstances before sentencing him or her to a lifetime in prison. Only if the trial court determines that the mitigating factors do not support a lifetime sentence as appropriate for the juvenile is the court then required to sentence the juvenile to at least forty years, subject to a review in twenty-five. Hall asks us to hold that a minimum sentence of forty years is a de facto life sentence and, hence, its mandatory character brings it within the dangerous purview of those laws struck by Miller. This, however, is simply not the case."

The Court further rejected the argument that compliance with Miller and Hall required the State to show, or the trial court to find, that the defendant is incorrigible.

Maps v. State, 3D18-2583, et al. (Mar. 31, 2021)

The Third District affirmed convictions for two counts of sexual battery and rejected Maps' argument that the trial court failed "to conduct an adequate Faretta inquiry prior to allowing him to waive his right to counsel and represent himself at trial."

Maps had been appointed a series of attorneys and made several requests to waive his right to be represented by counsel. He ultimately appeared pro se, both pretrial and at trial. He requested self-representation at a January 31, 2018 hearing. The court conducted an inquiry at that time and Maps waived his right to counsel. As the court was about to start the trial at that time, based on Maps' speedy trial demand, Maps changed his mind about self-representation and asked the court to reappoint his former attorney. The judge did so, and admonished Maps about "playing games." The attorney then obtained a continuance of the trial.

Days later, Maps filed a motion to "retract" the appointment of counsel and to reinstate his self-representation. A hearing was held on February 12th, and the court discharged counsel at that time, "without repeating [the] admonishments on the dangers of self-representation." The judge "believed there was no need for this in light of the last hearing at which Maps was fully informed of these risks, and there had been no change in circumstances." Maps argued that the trial court was obligated to conduct a full Faretta hearing at this proceeding.

The Third District disagreed. In "this case, the January 31, 2018 hearing and the February 12, 2018 hearing were both part of the same pretrial stage of the proceedings," and the earlier hearing included a lengthy and adequate Faretta colloquy. Additionally, "courts have recognized that in some circumstances, a court's decision to forgo a full Faretta colloquy prior to accepting a defendant's waiver of the right to counsel might not amount to error if *the record as a whole* demonstrates that the defendant was well aware of his rights and made a knowing, intelligent, and voluntary election to represent himself." The January 31st inquiry was adequate and there were "no changes in the intervening circumstances between the original waiver of counsel and the renewed waiver on February 12, 2018, and nothing in the record shows that Maps' brief change of mind in any way affected his understanding of his rights, the charges and possible penalties he was facing, or the risks of self-representation."

Fourth District Court of Appeal

Willingham v. State, 4D19-1883 (Mar. 31, 2021)

The Fourth District affirmed the conviction and sentence for armed robbery and possession of a firearm by a felon, and addressed two issues.

The trial court did not err in admitting a surveillance video from the shopping center where the offenses occurred. The State made a prima facie showing that the video was authentic. "The store manager testified that the videos were a fair and accurate representation of what happened that day. The sales representative testified the video footage accurately depicted her vehicle and the man running to the SUV. Similarly, the store manager testified he saw a dark SUV consistent with the surveillance video. The footage obtained from the store's inside camera's was consistent with the shopping center's outside footage. The State established the footage was reliable." Additionally, the footage had a time and date stamp and a passcode was needed to access the store's recordings, and the store owner did not edit or tamper with the recordings.

The defendant also argued that the mandatory minimum life sentence based on the Prisoner Releasee Reoffender statute violated the constitutional prohibition against cruel and unusual punishment because "he committed the past qualifying offense when he was a juvenile," although he was 25 when he committed the current offenses. The Fourth District disagreed.

Hernandez-Perez v. State, 4D19-3309 (Mar. 31, 2021)

In a cursory opinion, without any facts, the Court affirmed the defendant's convictions, and held, inter alia, that the failure to conduct a Daubert inquiry of an expert witness was an issue that was not preserved for appellate review absent a contemporaneous objection.

Fifth District Court of Appeal

Hull v. State, 5D20-701 (Apr. 1, 2021)

The Fifth District affirmed the defendant's conviction and sentence and held that "Florida law authorizes custodial arrests for violations of local ordinances that carry criminal penalties."

An officer observed a streaming video of an outdoor party with beer drinking in an empty downtown parking lot. The officer drove to the scene and arrested Hull for possession of an open container. In a subsequent search, the officer found narcotics. The Appellant's argument revolved around the scope of the Florida Supreme Court's holding in Thomas v. State, 614 So. 2d 468 (Fla. 1993). There, the Court held that "when a person is charged wit violating a municipal ordinance regulating conduct that is noncriminal in nature, such as in the traffic control area, section 901.15(1) only permits a person to be detained for the limited purpose of issuing a ticket, summons, or notice to appear. A full custodial arrest in such situations is unreasonable and a violation of the Fourth Amendment. . . ." Section 901.15(1) did "not provide blanket authority to perform a custodial arrest for all local ordinance violations. However, nothing in *Thomas* precludes a custodial arrest for a violation of an ordinance that is criminal in nature."

The Court also rejected Hull's argument that the ordinance at issue was non-criminal in nature, even though it carried criminal penalties. Section 775.08, Florida Statutes, defines "crime" as a felony or misdemeanor. The section excludes local ordinances from the definition of a misdemeanor. Hull's emphasis on the definitions of section 775.08 "confuses the real issue: whether the search of Appellant was performed incident to a lawful arrest. Nothing in section 775.08 prohibits the custodial arrest of an individual who violates a municipal ordinance."

Hand v. State, 5D20-1312 (Apr. 1, 2021)

The Fifth District affirmed the denial of a second amended motion under Rule 3.850. The trial court denied the motion for failing, in part, "to include a proper oath." The Fifth District affirmed "because Hand failed to correct the deficient oath after receiving an opportunity to amend."

Hand argued, on appeal, that he corrected the oath in his trial-court motion for rehearing. The Court disagreed, emphasizing that the deficiency was "more than a mere typographical error in the case number, or a misunderstanding by the movant due to consolidation with another case." Those were the types of deficiencies that had existed in cases the Appellant was relying on.