Case Law Update
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Prepared by
Richard L. Polin

Supreme Court of Florida

Boston v. State, SC20-1164 (Oct. 7, 2021)

The Supreme Court resolved a certified conflict between the First and Second District Courts of Appeal and held that when a defendant is convicted by a jury verdict after raising a self-defense claim, the defendant is not "entitled to a new immunity hearing if the trial court applied the incorrect standard at the immunity hearing under section 776.032, Florida Statutes (2017).

In this case, the trial court conducted a pretrial Stand Your Ground immunity hearing. In 2017, the legislature changed the burden of proof. Previously, the burden had been on the defense. The 2017 amendment placed the burden on the State. The trial court erroneously applied the pre-2017 burden to an offense which occurred prior to the statutory amendment. The Florida Supreme Court, in Love v. State, 286 So. 3d 177 (Fla. 2019), held that the amended burden of proof applied to all immunity hearings held after the effective date of the statutory amendment – June 9, 2017.

Although that amended burden of proof should have applied in this case, the error was deemed harmless by the Florida Supreme Court. Under the applicable pretrial burden, the State would have been obligated to prove that the defendant was not entitled to immunity by clear and convincing evidence, once the defendant presented a prima facie claim of self-defense immunity. At trial, the State had to overcome the claim of self-defense by a higher burden – proof beyond a reasonable doubt. The higher burden at trial therefore cured the application of the erroneous burden at the pretrial hearing.

First District Court of Appeal

Harris v. State, 1D19-1771 (Oct. 6, 2021)

For convictions of first-degree murder and attempted armed robbery with a firearm, the trial court sentenced Harris under the 10-20-Life statute to terms of life without parole for the murder and life with a 25-year mandatory minimum sentence

for the attempted robbery. The sentence for the attempted robbery was reversed for resentencing. "[O]nce a trial court orders a minimum mandatory sentence under the 10-20-Life Statute, it exhausts its discretion and must have additional authority to impose any additional sentence."

Wilson v. State, 1D19-2387 (Oct. 6, 2021)

On appeal from a conviction arising out of a drunk driving accident, the First District reversed an award of restitution because it "result[ed] in an impermissible double recovery because the victim's civil settlement should have been set off against the amount of restitution."

The victim of the accident, prior to the restitution hearing, obtained a settlement from her insurer for medical expenses in the sum of $8,288.31. At the restitution hearing in the criminal case, the court ordered restitution for that sum, in addition to separate, unrelated expenses of $878.40. Under section 775.089(2)(a), Florida Statutes, "a restitution order requires a defendant to pay the cost of necessary medical treatment, physical therapy and rehabilitation, and loss of income." Although restitution does not prevent any later civil recovery, under section 775.089(8), "the amount of such restitution shall be set off against any subsequent independent civil recovery." "Although the statute assumes the restitution order will come first, the sequence is unimportant." And, "civil damages might be different from those recoverable through restitution, so a court must set off only for the elements of damages already recovered."

Bowie v. State, 1D19-2562 (Oct. 6, 2021)

The First District applied the Florida Supreme Court's previous holding in State v. Dortch, that "for a defendant appealing a conviction based on alleged incompetency at his guilty plea, 'there is no fundamental error exception to the preservation requirement of rule 9.140(b)(2)(A)(ii)(c).'" The issue must be preserved by a motion to withdraw plea.

A concurring judge concluded that the issue had been sufficiently preserved under unusual circumstances. Bowie had entered a guilty plea, but it was withdrawn based on mental health concerns. A psychological examination was done, and subsequently Bowie again pled guilty and was sentenced. Because of the unusual procedural history of this case, the concurring judge believed that "it may be that discussion and analysis is worthwhile to consider tweaking the applicable procedures and rules so that anomalous situations are avoided, such as requiring a

potentially incompetent defendant to have filed – independent of his legal counsel – a motion to withdraw plea in order to preserve a claim of incompetence for direct appeal."

Thornton v. State, 1D20-1355 (Oct. 6, 2021)

The First District affirmed the denial of a Rule 3.850 motion for which an evidentiary hearing had been held. Counsel was not ineffective for either failing to file a motion to suppress an allegedly coercive confession or for "agreeing to publish a redacted version of the same confession," where the jury was "deprived of the opportunity to independently determine whether [the] confession was coerced." Thornton argued that detectives told her "that her son could possibly face the death penalty."

During her initial interview, Thornton, after learning of the presence of a glove containing her DNA, "admitted she was present when her son suddenly decided to shoot the clerk and rob the store." She admitted to helping to cover up the offense by removing a surveillance camera. She asked the detective "if the State Attorney could work out a deal for her in exchange for testifying against her son." The son confessed to both offenses, but stated "he committed both at the behest of his mother." He implicated her in the planning of the offenses. In a second interview, "Thornton was confronted by the possibility that her son could face the death community." She was also told "that the word in the community was she was letting her sone take the sole blame for the robbery and murder." She "ultimately admitted her involvement in the robbery, but maintained she did not commit premeditated murder and did not know [her son] was going to kill the store clerk."

At trial, defense counsel "did not object to the admission of a redacted portion of the second interview recording." The "jury was told that "each recording was redacted to cut out irrelevant small talk between Thornton and law enforcement. But the redacted portion of the second interview included the death penalty discussion. Thus, the jury did not hear law enforcement tell Thornton that her son may face the death penalty or tell her what people in her community were saying about her letting her son take the blame."

At the evidentiary hearing, trial counsel "testified that he decided not to file a motion to suppress after reviewing the unredaced video interviews for 'police techniques or circumstances' that would 'make some or all of her statements involuntary.'" Counsel "concluded that the death penalty discussion was not 'so coercive [that it] overcame [Thornton's] free will. . . ." Counsel noted the substantial

evidence reflecting that Thornton planned the robbery with her son. Counsel did not believe that the interview technique appealing to the sense of standing in the community was not coercive.

With respect to the statements about the death penalty as a possible sentence for the son, that was "a real possibility for Thornton's son based on the execution of a store clerk during the commission of a felony." It was not coercive because it was simply a "part of a conversation regarding possible penalties" that could be faced. Even if the motion to suppress should have been filed, based on statements by the trial court judge, it was clear that the motion to suppress would not have been granted. Thornton's "free will was not overcome by" the references to the death penalty. When confronted with DNA evidence, "instead of being overwhelmed by motherly love, Thornton blamed her son, admitted only to helping cover up his crime, and asked for the State Attorney to work out an immunity deal for her." In the second interview, after the statements about the death penalty and Thornton's standing in the community, "Thornton still only confessed to the robbery."

As to the claim regarding the lack of objection to the redacted statements, this was deemed a reasonable strategic decision by counsel. The redaction was "favorable" to Thornton, as it "enabled trial counsel to argue, consistently with Thornton's first recorded statement, that she neither planned the robbery-murder nor knew her son was going to commit the robbery-murder before the incident suddenly began." It was also unlikely that the jury "would have believed Thornton's confession was coerced and then disregarded it given her willingness to 'hang her child,' which was what the jury heard when the first recorded interview was published. And had the full unredacted interview been published, the jury would have learned that her son told detectives that Thornton planned the robbery and the murder."

Third District Court of Appeal

Lucas v. State, 3D19-1941 (Oct. 6, 2021)

The Third District affirmed convictions for first-degree murder, armed burglary, and aggravated animal cruelty. The Court reversed a conviction for aggravated battery as a lesser included offense of the charged offense of attempted felony murder.

Without setting forth the facts regarding claims regarding the admissibility of evidence, the Court provided several parenthetical citations noting principles

regarding restrictions to attacks on the credibility of a witness by evidence of a prior conviction, as well as the scope of a lay witness' testimony.

The trial court did not deny Lucas "his fundamental right to a sentencing hearing." After the publication of the verdict, the judge announced an intention to set a future sentencing date, but defense counsel said, "[you] can sentence him now." The judge wanted the future date to permit victims to be present, in addition to the late hour of the jury's verdict – close to midnight. Defense counsel then requested that the hearing be set for "a few weeks," without stating any reasons. The State asserted that the victims were aware of their right to be heard on the record and that they would waive it as they waned to "finalize it right now." The judge the proceeded with the sentencing hearing.

On original charges of attempted premeditated murder of a victim and attempted felony murder of the same victim, the jury returned verdicts for the lesser-included offense of aggravated battery, and Lucas was sentenced for each one. The two offenses were based on acts committed against a single victim in the course of a single criminal episode. This resulted in a double jeopardy violation, and one of the convictions and sentences was therefore vacated.

State v. In Re: Forfeiture of $133,888.00 in U.S. Currency, 3D20-1809 (Oct. 6, 2021)

The Third District reversed "the trial court's order denying [an] application for seizure pursuant to the Florida Contraband Forfeiture Act." Contrary to the trial court's determination, the State established the existence of probable cause.

Although relevant facts standing alone might have been insufficient to establish probable cause, the following facts, in their totality, were sufficient:

> . . . (1) questioning conducted pursuant to an investigation involving narcotics trafficking, gold smuggling and money laundering; (2) the large amount of currency found in an Adidas bag, which was previously kept in the trunk of a vehicle; (2) [sic] the currency was packaged in 'quick count' bundles commonly carried by drug dealers; (3) a certified drug-detection canine alerted to the currency, indicating it had recently been in close or actual proximity to a significant amount of narcotics; (4) Forero claimed that he was delivering the money to a woman for a

> Colombian friend but could not provide any identifying information; (5) Forero failed to explain why the money was being delivered to a residence rather than a business; (6) all three of the vehicle's passengers had inconsistent or non-existent explanations for the source of the currency; and (7) all three of the vehicle's passengers denied ownership of the currency.

These facts resulted from an ongoing investigation, with surveillance on a particular vehicle and observations of the occupants entering and leaving two businesses while handling bundles of currency, "which they retrieved from an Adidas bag located in the vehicle." Officers followed the vehicle and approached the driver after he exited and retrieved the Adidas bag from the trunk. Forero placed the bag on the ground and volunteered that it contained about $130,000 in cash, that he did not own it and that he was instructed by "a friend named 'Diego,' who lives in Colombia, to deliver it to a person named 'Angelica.'" The two other occupants were questioned and denied possessing the currency. A drug-detection canine was used and then signaled that the bag with currency had "recently been in contact with narcotics."

Hernandez v. State, 3D21-0381 (Oct. 6, 2021)

The Third District affirmed convictions for three charges of "possessing undersized snapper" and one of "possessing more than ten snapper in violation of Florida Administrative Code Rules 68B-14.0035(7) and 68B-14.0036(1)(a)."

The evidence was sufficient to sustain the convictions. Although the trial court excluded photos of the snapper at issue based on noncompliance with section 379.3381, Florida Statutes, one of the officers testified that he measured each fish; that the legal size limit for the snapper was 12 inches in length; that they were all "grossly undersized"; that the mutton snapper were also "grossly undersized"; that they had to be at least 18 inches; and that the "lane snapper," which had to be at least eight inches, were also undersized. There was also a limit on the number that could be caught – 10 snapper in all, in an "aggregate bag."

Hernandez argued that the "best evidence rule required that either the physical snapper or photographs of the snapper be admitted into evidence." The best evidence rule, however, applies only "to writings, recordings, and photographs." Although photos could be used under section 379.3381, the statute's language was "permissive," and the statute did "not exclude testimony alone."

Lindsey v. State, 3D21-0836 (Oct. 6, 2021)

A Rule 3.800(a) motion to correct an illegal sentence was properly denied where Lindsey "was properly credited for the ten-year minimum mandatory he served upon his original conviction," when he was sentenced upon revocation of probation. There was no double jeopardy violation.

Fifth District Court of Appeal

Wilson v. State, 5D20-1653 (Oct. 8, 2021)

The denial of a Rule 3.850 motion was reversed and the Fifth District vacated a conviction and remanded for a new trial. In a very brief opinion, the Fifth District noted the existence of a "pattern of trial counsel errors traversing the proceedings from pretrial to closing argument." This included, among others, counsel's "failure to call an available expert witness to challenge the State's otherwise unrefuted medical expert testimony concerning the victim's injuries."

Sullins v. State, 5D20-2112 (Oct. 8, 2021)

The Fifth District reversed the summary denial of one claim in a Rule 3.850 motion and remanded for further proceedings.

Sullins "alleged in this ground that his trial counsel was ineffective for failing to advise him that the State had extracted information from his cell phone that would severely contradict his alibi defense. Sullins averred that, had counsel provided this information, he would have accepted the State's pretrial plea offer of a twenty-year mandatory minimum prison sentence, which was less severe than the sentence that he received after trial."

At trial, when the State sought to introduce this evidence, defense counsel objected, stating, "I could be wrong, but I don't remember seeing this report before." The State asserted that it had been sent to defense counsel seven months earlier. It was referenced on a previously filed notice of supplemental discovery, which included a certificate of service showing that it was emailed to defense counsel. Defense counsel then "speculated that, perhaps, 'the report did not arrive.'"

"Sullins's counsel should have advised him of the report as it was a 'pertinent matter' that Sullins needed to consider before deciding whether to accept or reject

the State's offer." "While we acknowledge the postconviction court's logical premise that counsel cannot be ineffective for failing to advise Sullins of a document that she had not received, we conclude that the record attachments to its denial order do not conclusively show that Sullins's counsel did not receive the report." The case was remanded for an evidentiary hearing on the claim.