

Case Law Update
February 7, 2022
Prepared by
Richard L. Polin

Eleventh Circuit Court of Appeals

[United States v. Maurya, et al.](#), 19-10746, et al. (Feb. 1, 2022)

Defendants Hardwick and Maurya appealed convictions for conspiracy, making false statements to a financial institution, and wire fraud. The convictions were affirmed, but the case was remanded for further proceedings as to restitution for one defendant, and for resentencing.

Maurya's sentence was vacated for an ex post facto violation because the district court applied a sentencing enhancement that did not exist when her offense was committed. The offense ended in mid-2014, and the two-level substantial financial hardship enhancement of U.S.S.G. s. 2B1.1(b)(2)(A)(iii), was added in 2015. A restitution order was vacated, with the government's concession, because the district court failed to make any factual findings.

Hardwick argued that the district court erred in denying a request for a bill of particulars. The Eleventh Circuit agreed that the indictment provided adequate notice of the charges. The request for the bill of particulars included a battery of specific questions," a few of which are quoted in the Court's opinion by way of example. "At bottom, Hardwick simply wanted the government to explain ahead of time which transactions, amounts, accounts, and other details would be most significant at trial; essentially, he asked about the government's specific legal 'theory.' And he also tried to use a bill of particulars to 'compel the government to provide the essential facts regarding the existence and formation of a conspiracy' – a practice we have explicitly forbidden."

At trial, Hardwick sought to portray Maurya as the mastermind of the scheme and sought to introduce extensive evidence that the district court excluded: a suicide note from Maurya's former romantic partner and coworker; "a video of Maurya lying to a former employer;" "and testimony from Maurya and four of her employers, who Hardwick says were in a 'unique position to testify as to how a hallmark of Maurya's *modus operandi* was to create an "aura of prosperity"' at each company where she had worked."

There was no error in excluding the suicide note based upon a finding that it was not trustworthy or uniquely probative, and its authenticity was not established. It was also cumulative of other evidence indicating Maurya's untruthfulness. Hardwick challenged the exclusion of the video based on the district court's failure to provide an explanation for its exclusion. That is not a basis for reversal on appeal. And, the district court was presumed to have agreed with one or both of the government's proffered justifications, neither of which was challenged by Hardwick on appeal. As to the witnesses regarding the *modus operandi*, the district court permitted one of the proffered witnesses, and a court may limit the number of witnesses to avoid cumulative testimony.

There was no error in admitting an exhibit, a chart summarizing corporate net income for a three-year period, along with payments made by the corporation to Hardwick during that period. Such summary charges are permitted under Rule 1006 "when any assumptions they make are 'supported by evidence in the record.'" Here, an "auditor testified that the [financial] statements [on which the charts were based] were trustworthy."

The district court did not err in rejecting a hearsay challenge to testimony from an employer regarding that employer's knowledge that Maurya had agreed to plead guilty to conspiracy related to prior employment. Hardwick had repeatedly referenced this plea deal during opening argument.

A jury instruction was given on deliberate ignorance, which was challenged on appeal because the Government repeatedly maintained during trial that Hardwick was fully aware of the fraud. Such an instruction should not be given when the sole evidence goes to actual knowledge. Any error here was found to be harmless, however.

Supreme Court of Florida

[Booker v. State](#), SC21-763 (Feb. 3, 2022)

The Florida Supreme Court affirmed the summary denial of a sixth successive motion for postconviction relief.

Booker argued that a report from a microscopist he retained reviewed a 2013 DOJ report and an agent's prior report and handwritten notes, and that this revealed that the microscopic hair comparison analysis from the trial had been unreliable and that the testifying agent's handwritten notes conflicted with his trial testimony. This

failed to establish a Brady claim as the handwritten notes of the agent had been used by that agent at trial to refresh his recollection, and Booker could have examined them at that time. For the same reason, this information could not serve as the basis for a claim of newly discovered evidence – it could have been discovered with reasonable diligence over 40 years ago.

[Bell v. State](#), SC20-472 (Feb. 3, 2022)

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

After a Faretta inquiry, Bell was permitted to represent himself and he subsequently entered a no contest plea to all charges. He also waived his right to a penalty-phase jury. At the subsequent sentencing hearing, he presented brief testimony on his own behalf as to mitigation, and further entered into evidence a prior competency report.

Bell challenged the failure of the trial court to appoint independent, special counsel, “to represent the public interest in bringing forth all available mitigation.” When “a capital defendant waives the right to present any mitigating evidence and invites a death sentence, the trial court must order the preparation of a comprehensive PSI and require the State to put into the record any mitigating evidence in its possession.” Those procedures are inapplicable when a defendant does not waive the right to present mitigation. Bell did not waive that right and the trial court therefore did not err by not employing those special procedures.

The Supreme Court also found that the no contest plea was voluntary, noting that Bell indicated he understood the rights he was waiving. The trial court explained the seriousness of the charges and the possible sentence of death. Bell stated that he had not been threatened or coerced or promised anything in exchange for the plea. And, the State provided a factual basis for each charge and Bell did not object to any portion of it.

First District Court of Appeal

[Bilus v. State](#), 1D21-132 (Feb. 2, 2022)

An order summarily denying a Rule 3.850 motion was reversed, in part, for further proceedings. As to one claim of ineffective assistance of counsel, the lower court, in rejecting it, relied upon and attached “records from a related federal habeas

proceeding. When attaching records to conclusively refute a claim, the state trial court must attach “records in the case,” and the federal court records appended were not a part of the state court case file.

Second District Court of Appeal

[K.T. v. State](#), 2D20-670 (Feb. 4, 2022)

Although the trial court, on a Rule 8.135(b)(2) motion to correct a disposition order, orally denied the State’s motion for restitution because the State failed to prove the amount and K.T.’s ability to pay, the trial court failed to render an amended disposition order. The case was remanded with directions to enter a disposition order reflecting that K.T. was “not required to pay restitution.”

Third District Court of Appeal

[Manetta v. State](#), 3D21-1769 (Feb. 2, 2022)

The Third District affirmed the summary denial of a Rule 3.850 motion. The motion alleged that counsel was ineffective for failing to file a motion to dismiss the charge of failing to register as a sexual offender, on the grounds that Manetta was not “statutorily required to register until after he completed his fifteen years of probation.” The trial court correctly concluded that the order designating Manetta a sexual offender in 2009 required that he register within 48 hours of his release from prison, and that section 943.0435(h), Florida Statutes, similarly required registration at that time.

[Penalver v. State](#), 3D21-1879 (Feb. 2, 2022)

A certiorari petition challenging an order denying a motion to dismiss based on stand your ground immunity was granted. The trial court denied the motion because it was not sworn and Penalver did not rely on record evidence and did not present any evidence or testimony to support the claim of immunity.

The Third District relied on its recent decision in [Casanova v. State](#), 46 Fla. L. Weekly D2326 (Fla. 3d DCA Oct. 27, 2021), which held that a defendant’s motion to dismiss “can establish a prima facie claim of self-defense immunity from criminal prosecution even though the motion to dismiss is not sworn to by someone with personal knowledge or supported by evidence or testimony establishing the facts in the motion to dismiss.”

[Song v. State](#), 3D22-0079 (Feb. 2, 2022)

A prohibition petition seeking the disqualification of the trial judge was denied. The judge referred to “[the defendant’s] occupation as a law enforcement officer in denying [a] motion for modification of pretrial release conditions.” “If viewed in isolation, the reference might invoke a concern of partiality. However, here, a full review of the transcript of the proceedings reveals the trial court merely considered all relevant factors in ruling upon the motion and refused to afford petitioner any special treatment.”

Fourth District Court of Appeal

[Love v. State](#), 4D20-129 (Feb. 2, 2022)

A restitution order was reversed and remanded for a new hearing because the award was not supported by competent, substantial evidence.

At a real estate closing, where the seller was not represented by counsel, but Love was, the owner provided the signed warranty deed and then learned, contrary to expectations, that Love was providing a promissory note instead of cash. The seller unsuccessfully attempted to get the deed back. Love recorded it, but it was later found to be defective due to a scrivener’s error. As a result of a cloud on the title, the owner could not resell the property or rent it and incurred expenses such as property taxes and HOA fees for those years. The owner also had to hire an attorney for a quiet title action.

The trial court awarded restitution of \$72,360 for lost rent and \$7,905 for attorney’s fees incurred by the owner. “While the owner testified that she paid the attorney \$300 per hour, the State failed to introduce any evidence relating to how many hours the attorney expended on matters for which restitution was proper.” Although the State argued on appeal that the attorney for the owner testified at trial that he was paid that amount for his work, that testimony was not in the appellate court record.

[Sanders v. State](#), 4D20-1913 (Feb. 2, 2022)

This case was remanded for an evidentiary hearing on a sentencing claim. Sanders challenged multiple prior convictions included on his sentencing scoresheet. The claim was raised in a 3.800(b) motion while the appeal of the sentence was

pending. In the appeal, the State agreed that it had not introduced competent evidence as to the convictions in the prior record and that Sanders was entitled to an evidentiary hearing as to that. Depending upon what occurs at that evidentiary hearing, if the scoresheet is found to be erroneous, a resentencing may then be required.

[Alexander v. State](#), 4D21-1735 (Feb. 2, 2022)

The Fourth District affirmed while citing the principle that the appellate court had not been provided with an adequate record on appeal. Facts regarding the deficiency of the record on appeal are not included in the opinion.

Fifth District Court of Appeal

[Dalton v. State](#), 5D21-542 (Feb. 4, 2022)

An 11-year sentence imposed for a violation of probation was reversed because “it exceeded [Dalton’s] original five-year ‘true split’ sentence.”

Dalton originally pled guilty to two felonies and received concurrent five-year prison sentences, “suspended upon her successful completion of two years of community control.” Upon violation of community control two months later, she was sentenced to concurrent five-year prison sentences. In 2018, the trial court modified the sentence and placed Dalton on probation for the remainder of her sentence, further providing that upon any further violation, the court “may revoke your probation and impose any sentence which it might have imposed before placing you on probation.” Upon a new violation, she was sentenced to concurrent terms of five years and eleven years.

The original sentence for the second-degree felony had been “suspended upon . . . successful completion of two years of community control.” That created a “true split sentence,” which limited subsequent sentencing for a violation to the remaining balance of the original five-year sentence.

Acceptance of the modified sentence in 2018 did not result in a waiver of the right to challenge the final 11-year sentence. The language included in the 2018 modification order was consistent with the trial court’s original intent to limit “Dalton’s prison sentence exposure on her second-degree felony to five years in prison. The court’s modification order did not contain language warning Dalton that

if she violated her probation, the court could impose a prison sentence greater than five years.”