Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Moss, 19-1458 (April 12, 2022)

The Eleventh Circuit addressed multiple issues in an appeal from convictions for healthcare fraud offenses. This opinion has since been vacated and an opinion on rehearing was issued on May 20, 2022. This case will be included in the future issue of the Case Law Update dated May 23, 2022. Issues include the sufficiency of the evidence, limits on character witnesses, limits on closing argument, challenges to the sentence, and restitution.

United States v. Woodson, 20-10443 (April 13, 2022)

The Eleventh Circuit affirmed multiple convictions and sentences for offenses related to child pornography and extortionate interstate communications.

Based on an analysis of the totality of the circumstances, the Court concluded that Woodson was not in custody for purposes of Miranda and a motion to suppress statements was properly denied. Woodson was arrested when the police were executing a search warrant at his family's townhouse. Although the officers were wearing tactical gear and had their firearms drawn when the confronted Woodson's brother and handcuffed him upon entry, by the time they reached Woodson's bedroom, their weapons were holstered. Their entry awakened him, and he was handcuffed and taken to the living area, joining his brother, mother and sister.

A detective arrived to interview suspects, but did not know "who was responsible for the messages from the traced IP address" and interviewed the brother, Brandon, first, and then Woodson. The detective wanted to do the interviews outside the home for privacy while the search was being conducted. It was cold out, so the detective proposed sitting in the police van in front of the residence. Brandon's cuffs were removed and they went to the van and spoke for about 15 minutes.

The detective then dealt with Woodson, who agreed to talk, was uncuffed, and went with the detective to the van. Woodson was in the front passenger seat and the

detective in the driver's seat, with a second detective in the back seat. Woodson was immediately told that he was not under arrest and was not charged with a crime and that they were talking voluntarily. The detective did not administer Miranda warnings. Woodson proceeded to give substantial, detailed incriminating statements.

Based on the foregoing facts, "a reasonable person in Woodson's position would feel free to terminate the interview and walk away. But because we recognize that it is somewhat close, we also consider whether the interview environment presented the same risks of coercion as the interrogations considered in *Miranda*." The display of "police control and authority" during the search was not "so coercive that it tainted [the] later interview." Police may detain occupants of premises while a proper search is being conducted. And, while earlier circumstances leading up to questioning may be relevant, "the emphasis is rightly placed on the environment surrounding the interview itself. For this reason, neither the fact that Woodson was restrained before the interview nor the high number of officers involved in the search – yet uninvolved in questioning Woodson – rendered the interview custodial." And, "Woodson did not experience the 'sharp and ominous charge' of circumstances associated with custody under *Miranda* 'when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station' or another 'police-dominated atmosphere.'" Neighbors were able to observe the ongoing questioning, and that "kind of exposure to public view mitigates the risks that motivated *Miranda*. . . ." Additionally, Woodson was not "cut off from his normal life" and promptly returned to it, and was not arrested until eight months later.

Some facts did suggest a danger of coercion, such as the detective telling Woodson he was suspected of "'shaky' online behavior," and further threatened to tell Woodson's bosses whether he lied during the interview. While raising a concern, the Court could not "say that these few statements exerted serious coercive pressure in light of the many circumstances pointing in the opposite direction." Nor was the length of the interview dispositive, as the Court has previously concluded that interviews of up to four hours were non-custodial. Woodson was questioned for about one hour.

Woodson also challenged the substantive reasonableness of his sentence, arguing that he should have received a sentence near the bottom of the applicable sentencing range because he did not target "prepubescent children." The appellate court termed this argument "shocking." "Through technology, Woodson and his team tapped into the vulnerabilities of hundreds of girls, and then degraded,

humiliated, and threatened them. We cannot discern how his methods diminish the seriousness – indeed, the depravity – of his offense. . . ."

United States v. Hakim, 19-11970 (Apr. 14, 2022)

In a direct appeal, Hakim's convictions for three misdemeanors for failing to file a federal income tax return were reversed for further proceedings. Although Hakim was represented by counsel at trial, he lacked representation during the pretrial process, and his waiver of counsel at the arraignment was obtained after the magistrate judge misinformed him "that the maximum sentence he could receive if convicted was 12 month of imprisonment." He was subsequently sentenced to 21 months in prison. Based on the magistrate judge's misinformation, the waiver of counsel was neither knowing nor intelligent, and Hakim did not have to show prejudice to obtain a reversal.

As a preliminary matter, the Court found that the validity of the waiver of counsel was a mixed question of law and fact, reviewed under the de novo standard. The Court rejected the assertion of the dissenting opinion that the claim should be reviewed for plain error.

As to the merits of the argument regarding the validity of the waiver of counsel, the Government conceded that the magistrate's information was erroneous, but argued that other factors still supported the conclusion that the waiver was valid. The Court found that the magistrate failed to advise the defendant of the maximum sentence he faced and then provided incorrect information about it. Had the defendant learned the correct information through other sources, the conclusion regarding the validity of the waiver might have been different, but neither the government nor standby counsel corrected the magistrate judge's error. Where such misinformation has been provided by the court, and the record does not show that the defendant received the correct information through other means, the eight-factor analysis based on the other factors the government was promoting could not be applied. Most of those factors could not be analyzed if the defendant did not receive the correct information. The Court gave one example. While age, educational background, and physical and mental health "permit an inference that he would have understood countervailing information if it had been given, they do not permit an inference that he received that information." The Court further found that the invalid waiver of counsel resulted in a constitutional error that was structural. As a result the fact that the evidence in the case was overwhelming, played no part in the analysis, "because the denial of a right to counsel cannot be harmless error."

One judge dissented, concluding that the error should be reviewed under the plain error standard, rather than the de novo standard, and then found that plain error would not exist, emphasizing that standby counsel took over representation "well before trial," and thus had "ample occasion" to object before the trial even started.

First District Court of Appeal

Harris v. State, 1D20-829 (Apr. 13, 2022)

Harris received two consecutive 30-year sentences for attempted manslaughter with a firearm, both enhanced under the habitual felony offender statute. The First District, on direct appeal, after a Rule 3.800(b) motion was denied, reversed as the trial court erred by both designating Harris an HFO and then running the sentences consecutively. The trial court could "only impose a maximum sentence of thirty years for count one, with a fifteen-year minimum mandatory term, based on the HFO designation, and a consecutive term of fifteen years in prison for count two," based on the Prison Releasee Reoffender designation.

The original dual HFO-enhanced consecutive sentences were illegal under Hale v. State, 630 So. 2d 521 (Fl. 1993). The two offenses were part of the same criminal episode.

Robinson v. State, 1D20-2614 (Apr. 13, 2022)

In an appeal from convictions for multiple sex offenses, the First District reversed a 30-year sentence for sexual battery on a child over the age of 12 by a defendant over the age of 18. That offense, under s. 775.082(3)(c), Fla. Stat. (2011), was a second-degree felony with a maximum sentence of 15 years. The First District also ordered the trial court to correct several errors where the judgment of conviction noted incorrect degrees for the offenses for which Robinson had been convicted.

Patterson v. State, 1D21-0832 (Apr. 13, 202)

The First District affirmed a conviction for violation of an injunction for protection against domestic violence. The trial court did not abuse its discretion in admitting testimony regarding a phone call and voicemail in which the defendant contacted the victim.

The authentication requirement for such testimony is "satisfied by evidence sufficient to support a finding that the matter in question is what its proponent

claims," under Fla. Stat. s. 90.901. If the matter is within the witness's personal knowledge, the testimony is admissible without further authentication. "Here, the victim testified that she received a phone call from a phone number saved in her phone as Patterson's."

Pappas v. State, 1D21-1596 (Apr. 13, 2022)

For an aggravated assault committed in 2007, Pappas received a sentence that included a 20-year mandatory minimum under the 10-20-Life statute, for discharging a firearm during the offense. In a postconviction motion, he argued that aggravated assault was not a qualifying enumerated offense.

In 2016, the legislature amended the 10-20-Life statute and removed aggravated assault from the list of enumerated offenses. In 2018, the Savings Clause of the Florida Constitution was amended to allow the legislature to apply amendments to criminal statutes retroactively.

The First District held that the amendment to the 10-20-Life statute was not retroactive. And, with respect to the amendment to the Savings Clause, relief based on that Clause would require a clear expression of intended retrospective application by the legislature when it amended the 10-20-Life statute, and such an intent was not manifested by the legislature.

Other claims asserted in the postconviction motion were rejected as untimely.

Knowles v. State, 1D21-3051 (Apr. 13, 2022)

The First District affirmed the summary denial of claims of ineffective assistance of counsel, challenging convictions for armed burglary, grand theft of a firearm and grand theft.

Counsel was not ineffective for advising Knowles not to testify. His desired testimony would not have provided him with a reasonable hypothesis of innocence for purposes of prevailing on a motion for judgment of acquittal. He would not have been entitled to rely on the circumstantial evidence standard because the State's case was not wholly circumstantial. There was eyewitness testimony implicating Knowles in the offenses. And, he was tried as a principal to the burglary and there was evidence that he aided his codefendant. His postconviction motion further alleged that he told counsel "that he picked up the weapons and the bag his co-

defendant brought outside the victim's home after he learned that his co-defendant intended to burglarize the victim's home."

Counsel was not ineffective for failing to renew an objection to references to Knowles' presence in a car fleeing from law enforcement to establish consciousness of guilt. The codefendant was driving the car. Although the court overruled defense counsel's objection, the court offered to review the matter again, but counsel did not renew the objection. Defense counsel did, however, "elicit testimony from witnesses to show that it was the co-defendant, not Knowles, who drove the car and fled from law enforcement." And, Knowles could not show a reasonable probability that the outcome of the proceedings would have been different had there be a renewed objection, as the court may have denied the renewed objection for the same reasons as the court overruled the original objection.

Counsel did not concede Knowles' guilt. In closing argument, counsel stated: "You also heard testimony about the second person that left the house." This did not conceded Knowles' presence in the house; it just accurately noted testimony that the jury heard from prosecution witnesses. Defense counsel proceeded to "hotly" contest the claim that Knowles entered the house.

Second District Court of Appeal

Maderi and Guzman-Roig v. State, 2D21-957 (Apr. 13, 2022)

The Second District granted a certiorari petition and quashed the trial court's pretrial orders rejecting Petitioners' admittance into the pretrial veteran's treatment intervention program. The program was established by an administrative order in the Sixth Circuit.

In prior proceedings, the Second District rejected the trial court's conclusion that the program did not exist and remanded for consideration of whether the Petitioners should be admitted. The trial court then rejected their admittance based on the State's rejection of veterans with DUIs. Section 948.16(2)(a) authorizes such programs for veterans and it does not include an exception for DUI offenses. "Nor does it confer authority upon the State to approve or disapprove of the admission of any eligible veteran charged with any misdemeanor, including a DUI, into the misdemeanor PVTIP." The trial court has discretion and "by allowing the State to act as gatekeeper and divert veterans charged with misdemeanor DUIs only to the postadjudicatory veterans' intervention program, the trial court departed from the essential requirements of section 948.12(2)(a)."

Ryan v. State, 2D21-1572 (Apr. 13, 2022)

After a revocation of probation, Ryan was sentenced for several offenses, including kidnapping with a firearm, a life felony, for which he received a 50-year sentence. That sentence was illegal. Under section 775.082, Florida Statutes, for life felonies committed after October 1, 1983, the court may impose a term of imprisonment of life, or a term of imprisonment not exceeding 40 years. Thus, any non-life sentence had a maximum cap of 40 years. The same held true for the 40-year sentence imposed for armed sexual battery, which was also a life felony.

Fourth District Court of Appeal

Dean v. State, 4D20-2706 (Apr. 13, 2022)

Dean appealed from a life sentence imposed for a conviction for felony murder. The murder victim, Eric Flint, was Dean's accomplice in the underlying burglary. Dean argued that the PRR statute and Marsy's Law both required "the State to consider the views of Flint's mother, Ms. Tomlinson, in deciding whether to seek PRR sentencing."

The PRR statute sets forth the legislative intent that offenders be "punished to the fullest extent of the law. . . unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection."

And, Marsy's Law provided for the right to be heard in any public proceeding, including sentencing, during "which a right of the victim is implicated." The Fourth District agreed that Flint's mother should have been treated as a victim and the State did not formally label her as such. But, she was provided the right to be heard. Her counsel met with the elected state attorney and other prosecutors regarding the sentencing; this included several hours of discussions. Ms. Tomlinson's counsel asked the sentencing court to determine if Marsy's law provided her with the right to override the state attorney's sentencing recommendation, and "[t]hat she could not do." "The State had the prosecutorial discretion to invoke the Prison Releasee Reoffender Act. Without a compelling equal protection argument, we cannot disturb the State's exercise of its discretion." "The State must satisfy the requirements of Marsy's Law, but those requirements do not limit prosecutorial discretion."

Fifth District Court of Appeal

Teet v. State, 5D21-735 (Apr. 14, 2022)

On direct appeal, Teet's conviction for sexual battery on a child over the age of 12, but less than 18, by a "person in familial or custodial authority," was reversed because Teet was not in a position of custodial authority at the time of the alleged assault.

The victim was a 17-year old junior in high school and Teet was her classroom instructor for the JROTC program. He also supervised JROTC after-school and community service activities. The two of them developed a close relationship, and on two occasions, Teet provided her with rides home from JROTC after-school activities. It was after these rides home that Teet, according to the victim, entered her residence and the two engaged in oral sex and intercourse. On two of these occasions, the victims' mother had provided consent for Teet to drive the victim home. On a third occasion, no such consent was given, and the victim testified, as to that occasion, that she invited Teet in and they again had intercourse and oral sex.

The Fifth District found that the evidence did not show that Teet was in a position of custodial authority at the time of the incident for which consent to drive the victim home had not been provided by the mother or grandmother. Although the events occurred during the school year, the fact that neither the mother nor grandmother consented to Teet driving the victim home or entering the residence negated the conclusion that Teet was in a position of custodial authority. The offense did not occur on school premises; it did not occur during school hours; it did not occur during "a school-related or sanctioned extra-curricular event." The Court rejected the State's argument that "because Teet supervised the extra-curricular activity, driving the victim home afterward provides a sufficient connection between a recognized school activity and the sexual acts inside the household."

Although there were other available offenses that did not involve the element of custodial authority, the State did not seek jury instructions on such lesser included offenses, and the conviction for the offense here was reversed.