Case Law Update
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Supreme Court of Florida

Fletcher v. State, SC20-1862 (July 7, 2022)

The Supreme Court affirmed a conviction for first-degree murder and the sentence of death. Fletcher pled guilty and the trial court then conducted the penalty phase. The court found four aggravators: under sentence of imprisonment; prior violent felony; HAC; and CCP, all of which were assigned great weight. The court also fond the existence of ten nonstatutory mitigating circumstances, which were assigned varying degrees of weight: slight, very slight, or some.

The Supreme Court rejected the argument that the trial court erred by failing to ensure that all available mitigation was considered. The claim was not raised in the trial court and was thus reviewed under the fundamental error standard. Fletcher had decided not to present mitigation, but was represented by counsel. The trial court complied with Supreme Court case law governing defendants who choose not to present mitigation. The trial court obtained a comprehensive PSI which contained required information regarding Fletcher's "'criminal, educational, work, and family history.'" It referenced his prior suicide attempt, even though Fletcher did not participate in the PSI's preparation. The sentencing order reflected that the court considered the PSI. Appointed counsel had advised the court of Fletcher's traumatic childhood experiences, his drug use in prison, and other matters. Fletcher, on appeal, did not "identify any mitigation that the trial court failed to consider." As to the failure to appoint experts to assist counsel in developing mitigation, trial counsel advised the court that there was no need for such experts, "'because the defendant simply will not cooperate.'"

The Supreme Court also reiterated one of its prior holdings, that "only the existence of a statutory aggravating factor must be found beyond a reasonable doubt," thus rejecting the claim that "the trial court failed to determine beyond a reasonable doubt that the aggravating factors were sufficient to justify death and outweighed the mitigating circumstances."

Eleventh Circuit Court of Appeals

United States v. Cohen 21-10741 (July 6, 2022)

The Eleventh Circuit affirmed a conviction for being a felon in possession of a firearm and ammunition.

The district court denied a motion to suppress evidence. Cohen was stopped while driving a rental vehicle after running a stop sign. The car was registered to Enterprise and had been rented to the mother of Cohen's girlfriend. Cohen's license had been suspended, and he was driving the car with the permission of the girlfriend's mother. An inventory search was conducted prior to the towing of the vehicle, and officers found a firearm in the center console. Cohen admitted he knew it was there.

The district court found that Cohen lacked standing because he was an unauthorized and unlicensed driver of a rental vehicle. The Eleventh Circuit disagreed. Cohen still had a reasonable expectation of privacy "so long as he was otherwise in lawful possession and control of the vehicle." There was no evidence that he lacked lawful possession; he had permission from the renter listed on the rental agreement.

The suspension of his license did not defeat that reasonable expectation of privacy. The "common theme in the Supreme Court examples of individuals whose activities equate to a wrongful presence – a burglary plying his trade or a car thief – is that their conduct 'interferes with another's valid property interest.' . . . That is not true of drivers who commit common traffic violations nor is it true of Cohen. His unlicensed driving did not interfere with the authorized renter's valid possessory interest because he had the renter's permission to use the vehicle."

Cohen challenged the inventory search on the ground that the police had it towed to Enterprise, rather than a police impound lot. "Here, although the Tampa Police Department's policy provides that a vehicle will 'generally' be rotation impounded [to the wrecker company's lot] or police impounded, it does not state that officers are unable to do any other type of impound." There was no indication that the officers did not follow the procedures of the Department's policy, which included general provisions referencing the "circumstances of each individual situation."

First District Court of Appeal

Hatcher v. State, 1D20-3628 (July 6, 2022)

Hatcher argued that the trial court erred in denying a motion to suppress evidence because an officer lacked probable cause to search a vehicle based solely on the odor of marijuana. Hatcher argued that the smell of marijuana is indistinguishable from that of legal hemp. The First District affirmed the lower court, but did not address Hatcher's argument, concluding, instead, that probable cause was based on other factors in addition to the odor of marijuana.

Hatcher's van was stopped when it was observed veering out of its lane for no apparent reason; it looked like it was going to strike the curb and go on the adjacent sidewalk. The officer stopped and questioned Hatcher, whose "laid-back and lethargic demeanor suggested that he was under the influence of marijuana." The officer also smelled the odor of burnt marijuana from within the van. In response to a question regarding the presence of marijuana in the van, "Hatcher replied that he had just finished smoking a blunt and had thrown it out the window before the stop occurred." A K9 officer arrived and the dog alerted at the driver's door, but the dog could not distinguish between hemp and marijuana. A search then uncovered a digital scale with leafy green residue on it, and pills believed to be MDMA.

The foregoing observations, coupled with the officer's experience, Hatcher's statements and demeanor, constituted reasonable suspicion that Hatcher was under the influence of marijuana and justified the ensuing investigation.

Second District Court of Appeal

Jackson v. State, 2D21-2961 (July 8, 2022)

The Second District affirmed the denial of a habeas corpus petition. Jackson alleged that counsel misadvised him of the facts of the charge and law related to it prior to sentencing, and that counsel did not advise him or the judge of any mitigation. A habeas corpus petition "is not an appropriate vehicle for seeking postconviction relief." The petition should have been treated as a Rule 3.850 motion, and, as such, was required to attach court records that conclusively refuted the claim.

The appellate court construed Jackson's claim as pertaining solely to advice received prior to and in preparation for the sentencing hearing, after he had already entered into a negotiated plea. As the pleadings reflected a negotiated plea, they conclusively refuted a claim that pertained only to what transpired immediately prior

to sentencing. Although the plea agreement was not attached to the lower court's order, it was attached to Jackson's trial court petition. As the records refuting the claim were not attached to the trial court's final order, the case was remanded for further proceedings.

Fourth District Court of Appeal

S.I. v. State, 4D21-1551 (July 6, 2021)

The Fourth District affirmed a conviction for leaving the scene of an accident, but reversed the conviction for driving without a valid driver's license.

At trial, the State presented evidence regarding the accident that was at the heart of the offenses, as well as testimony from a deputy that when S.I. was asked for his license, he admitted he did not have one. Defense counsel objected to the admission of this statement based upon proof of corpus delicti, which the court overruled.

The State was required to present independent, substantial evidence tending to show the commission of the charged crime, prior to the admission of a confession. While there was evidence linking the defendant to the accident, there was no evidence other than the confession as to the lack of valid license. And, absent the confession, there was insufficient evidence for the charge of driving without a valid license, and the defendant was discharged on that offense.

Hormaeche v. State, 4D21-2071 (July 6, 2022)

Appellant pled no contest to two charges of vehicular homicide resulting in two deaths. He then sought, under Rule 3.170(f), to withdraw the plea based on erroneous advice. Counsel allegedly advised him "that his speed at the time of the collision precluded him from having a viable defense to the charges" The trial court denied the motion to withdraw after an evidentiary hearing, and the Fourth District reversed. The Fourth District addressed the question of "whether the defendant's excessive speed alone was enough to foreclose his ability to mount a defense to vehicular homicide charges on grounds that his conduct was merely careless as opposed to reckless." At the evidentiary hearing, "defense counsel candidly admitted that her advice to defendant was flawed as it was based on the mistaken belief that the level of intent necessary to support a conviction for vehicular homicide had been met solely because the defendant was speeding."

"Nothing in section 782.071,Florida Statutes (2015), supports the proposition that a finding of recklessness can be based solely on the numeric value of a driver's excessive speed – which would by itself only constitute a non-criminal traffic offense – in the absence of other determinant factors." This case involved a head-on collision on a heavily traveled thoroughfare, on a clear and dry afternoon. The defendant was not "swerving outside of his lane, nor was he weaving in and out of traffic or otherwise endangering pedestrians or bicyclists."

The State contended that the traffic light at the intersection had been red for seven seconds prior to the collision and the defendant was going 22 miles per hour above the posted speed limit, "while being carelessly distracted by his cellular phone because it reflected data usage around the time of the accident." Other evidence showed the "defendant failed to apply his brakes until he entered the intersection just prior to impact."

For purposes of the motion to withdraw, causation was not the issue as to which misadvice was given; the erroneous advice was as to whether the excessive speeding precluded a defense to the charge of recklessness. This constituted good cause for the motion to withdraw the pre-sentencing plea, and the trial court was obligated to grant the motion based upon the showing of good cause.

Fifth District Court of Appeal

Duffy v. State, 5D22-691 (July 8, 2022)

Appellate counsel from the prior direct appeal was ineffective for failing to argue the existence of fundamental error – that the defendant was convicted of an uncharged offense.

The defendant was charged with principal to robbery with a firearm and fleeing or attempting elude at high speed. The verdict from listed robbery with a deadly weapon as a lesser included offense of robbery with a firearm. The jury instructions also referred to robbery with a deadly weapon as a lesser included offense. The jury found the defendant guilty of the lesser offense of robbery with a deadly weapon.

The Florida Supreme Court previously held that robbery with a deadly weapon was not a lesser included offense of robbery with a firearm. It was error to instruct on that offense. And, a conviction for an offense not charged in the information constitutes fundamental error.