

Case Law Update
July 25, 2022
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First District Court of Appeal

[Burns v. State](#), 1D16-5113 (July 20, 2022)

On remand from the Florida Supreme Court for reconsideration in light of [Davis v. State](#), 332 So. 3d 970 (Fla. 2021), the First District affirmed the defendant's sentences, based on the holding that "a sentencing court does not err in considering a criminal defendant's failure to take responsibility or express remorse."

[Swift v. State](#), 1D21-799 (July 20, 2022)

In an appeal pursuant to a guilty plea as to manslaughter, Swift challenged the trial court's denial of his Stand Your Ground motion to dismiss based on self-defense immunity. The trial court denied the motion after an evidentiary hearing.

The trial court reached its conclusion after weighing contradictory evidence "presented by the neutral witnesses and responding officers. This Court will not reweigh the evidence on appeal." Swift claimed that he was protecting his sister "from imminent death or great bodily harm at the hands of Parker." Swift's sister testified that Swift was trying to break up the fight when Parker was stabbed. There were no signs of physical injuries to either Swift or his sister. His sister further testified that she went in and out of consciousness and could not say how the stabbing occurred. Other witnesses presented contrary evidence, except for corroboration that the sister did not see the stabbing. And, it was undisputed that Parker, the victim, was unarmed and there was no other evidence to support the sister's version.

Third District Court of Appeal

[State v. Woodruff](#), 3D19-561 (July 20, 2022)

The trial court granted a new trial for one count of lewd and lascivious molestation of a child under the age of 12, after hearing the defendant's Rule 3.850 motion. The trial court concluded that trial counsel was ineffective for failing to object to evidence of uncharged collateral crimes and that that deficiency was

prejudicial. The Third District disagreed because “the evidence did not relate to the only charge that resulted in a conviction.”

The defendant was charged with one count of sexual battery and three counts of lewd and lascivious molestation, which the Third District summarized as follows, after presenting more extensive facts: “(1) touching the victim’s vagina during the bedroom incident (Count 4); (2) having the victim touch his penis during the same incident (Count 2); (3) touching the victim’s vagina, breasts, and buttocks in the shower afterward (Count 3); and (4) putting his penis in the victim’s vagina in the pool on a separate occasion (Count 1).” The State also presented “evidence of at least three other uncharged acts of molestation, including having the victim wash his penis during the first shower incident, as well as the touching the victim’s vagina and having the victim touch his penis during a second, uncharged shower incident.”

The Third District rejected the State’s argument that the uncharged incidents were inextricably intertwined with the acts charged. “While the victim’s testimony that she also washed Woodruff’s penis during the first shower incident helped contextualize whether Woodruff touched her genitals in a lewd or lascivious manner, the testimony as to the two other acts of alleged molestation occurred during the second, uncharged shower incident fails either to clarify, explain, or contextualize the acts Woodruff was charged with, as the second shower occurred days after the first one.” Absent evidence of any strategic reason for failing to object, counsel was deficient.

However, that failure to object did not result in prejudice. Woodruff was convicted only for one incident – count 4 – the touching of the victim’s vagina during the bedroom incident. “Importantly, the jury acquitted Woodruff of Count 3 (the first shower incident) even though the improper collateral crime evidence (the uncharged second shower incident) served only to bolster the victim’s credibility (or discredit Woodruff’s denial) as to the charged first shower incident. We take the fact that the jury was able to weigh the victim’s credibility against Woodruff’s and make an independent determination about this guilt as to each individual charge (as opposed to simply deciding that Woodruff must have been guilty of something by virtue of the volume of allegations), coupled with the fact that all of the collateral crimes evidence at issue related only to acts that Woodruff was ultimately acquitted of and which occurred after the only act that resulted in a conviction, to indicate that there is no reasonable probability that counsel’s failure to object to the admission of the improper Williams rule evidence affected the outcome of this proceeding.”

[K.M. v. State](#), 3D20-1654 (July 20, 2022)

Over defense objection, the trial court conducted an adjudicatory hearing remotely, with witnesses testifying by use of videoconferencing technology. The trial court erred by overruling the objection “without making any case-specific findings of necessity for proceeding in this manner.” The hearing was held on October 14, 2021, at which time the Supreme Court’s Administrative Order AOSC20-23, Amend. 13 (May 5, 2021), was in effect, regarding Covid-19 emergency measures. The Third District’s decision was based on two prior recent decisions regarding remote proceedings in juvenile adjudicatory hearings: [M.D. v. State](#), 2022 WL 2334996 (Fla. 3d DCA June 29, 2022) and [J.T.B. v. State](#), 2022 WL 2334940 (Fla. 3d DCA June 29, 2022).

[State v. Mayes](#), 3D21-0720 (July 20, 2022)

The Third District affirmed the granting of a sworn motion to dismiss the charge of carrying a concealed firearm. The facts of the offense as alleged in the motion and State’s traverse and demurrer are not detailed in the opinion, other than noting that the trial court concluded that the State’s traverse did not contravene the material facts alleged, “namely that the firearm was within plain view and was thus not ‘concealed’ within the meaning of section 790.001(2), Florida Statutes (2020). As a result, the Third District affirmed the granting of the motion to dismiss. The opinion includes citations to prior opinions and quotations regarding the definitions of relevant terms: “concealed firearm,” and “ordinary sight of another person.”

Fifth District Court of Appeal

[Baker v. State](#), 5D21-3041, et al. (July 22, 2022)

After the entry of an open plea to the trial court and the finding of guilt and imposition of sentence, Baker filed a post-sentencing motion to withdraw plea, which the trial court denied. The Fifth District reversed, finding that the trial court “erred by denying [Baker’s] motion to withdraw plea after sentencing without first appointing conflict free counsel to argue the motion.”

The trial court imposed a sentence which was greater than the one that the State had offered, and which Baker had previously rejected before his open plea to the court. The motion to withdraw plea, which was filed by Baker’s counsel, argued that counsel “misadvised him as to what the best pleading decision was.” At the hearing on the motion, defense counsel advised the court that details of the alleged

misadvice were not included in the motion because of the conflict between Baker and the public defender's office.

Counsel suggested that the defendant would amend the motion with further facts and that conflict-free counsel could then set the motion for a hearing. The judge refused to appoint conflict-free counsel, finding it unnecessary "under the circumstances." The motion was denied without hearing from Baker himself, and the judge referred to the previous colloquy that the court had conducted with Baker at the time of the entry of the open plea to the court.

The motion that was filed was facially sufficient and Baker was entitled to representation by conflict-free counsel at the hearing because a hearing on a motion to withdraw plea is a critical stage of a criminal proceeding. As the motion alleged an adversarial relationship with existing counsel, new, conflict-free counsel had to be appointed unless the record conclusively refuted the allegations in the motion. The plea colloquy referenced by the trial court went to the issue of whether Baker had "been promised anything to enter the plea," and did not conclusively refute the allegations in the motion.