Case Law Update
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Eleventh Circuit Court of Appeals

Clements v. State of Florida, 21-12540 (Feb. 9, 2023)

In an appeal from denial of a federal habeas corpus petition, the Eleventh Circuit addressed a question of first impression: "whether Florida's registration and reporting requirements for sex offenders render those offenders 'in custody' within the meaning of s. 2254(a). Custody is a prerequisite to the filing of a section 2254 petition. The Eleventh Circuit concluded that the question was "difficult given Supreme Court and Eleventh Circuit precedent," but the Court concluded that custody did not exist.

The question was "whether the reporting and registration requirements constitute a sufficient restraint on the personal liberty of sex offenders in Florida to render someone like Mr. Clements 'in custody.'" "First, though Mr. Clements has to report in person to the authorities periodically and provide them with all sorts of information and updates, he knows exactly when he must do so: during his birthday month and six months thereafter. . . . He is not at the beck and call of state officials, and those officials cannot 'demand his presence at any time and without a moment's notice.'"

"Second, Mr. Clements is not required to live in a certain community or home and does not need permission to hold a job or drive a car. . . . And he can engage in legal activities without prior approval or supervision." "Third, Mr. Clements has to provide in-person advance notice of trips outside the state and outside the country, but the trips themselves do not require permission or approval by state officials."

First District Court of Appeal

Givens v. State, 1D21-2900 (Feb. 8, 2023)

The First District affirmed a conviction for sexual battery with threat of force and found that the evidence was sufficient.

Givens argued "that there was no evidence he was capable of inflicting great bodily harm" and that "there was no evidence that he could or would inflict greater harm than he had already, which resulted in minor harm at most." He "argues it would not have been feasible to cause harm to the victim in confinement because of security protocols." The offense occurred in a county jail and the victim was the defendant's roommate.

"Appellant threatened to beat the victim, hit him, and have him beaten down so that he would 'physically cower down' to Appellant. The jury heard testimony that these threats were accompanied by escalating physical attacks. Whether Appellant's threatened use of force was likely to cause serous personal injury or pain is a question for the jury, where there is any evidence to support such a likelihood." And, "even with the security protocols of confinement, there was ample evidence from which the jury could infer that the victim was reasonable in his belief that Appellant had the 'present ability to execute' his threats. The two men were jailed in a cell together, supervised by officers who were 'kind of busy' and did not view everything that happens in prisoners' cells in real time. Appellant had already slapped and punched the victim without intervention from corrections officers. He had forced the victim to engage in sexual acts that went undetected."

Second District Court of Appeal

Oquendo v. State, 2D21-2408 (Feb. 10, 2023)

The Second District affirmed a conviction for manslaughter with the use of a firearm and held that "the trial court was correct to reject Oquendo's request to present expert testimony on his post-traumatic stress disorder in support of his theory of self defense."

The shooting occurred outside a bar and there was a verbal confrontation between the parties preceding the shooting, during which the victim cursed at the defendant and said "I got something for you." Accounts from the defendant and other witnesses differed from that point on. The expert would have testified that the defendant suffered from PTSD for "a number of years and that a person with PTSD would be naturally inclined to believe that a situation was threatening." Oquendo argued that his was relevant to the issue of "his elevated perception of danger."

Such "evidence is not relevant to the issue of self defense in light of the objective standard for establishment of that justification." Thus, there was no error in excluding the testimony. The "peculiarity of a defendant's mental state is not

germane to the question of whether 'a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that [force].' "Evidence of Oquendo's PTSD would only go to show that his reaction was objectively *unreasonable* by virtue of a potential *misperception* of the dangerousness of the situation – i.e., that something others would not deem to be dangerous appeared to him to be so."

The admissibility of evidence of the battered-spouse syndrome was distinguished because that is used "to show why the defendant's actions were *reasonable* - to show that in spite of a reasonable perception of danger from the battering spouse, the battered defendant would remain in the home with her batterer where she may resort to the exertion of force against him to prevent imminent death or great bodily harm."

X.S. v. State, 2D21-2751 (Feb. 10, 2023)

The Second District disagreed with the Appellant's argument that there was a statutory cap under section 775.083(2), Florida Statutes, of $50, for an assessment for crime prevention funds. The trial court imposed an assessment of $65. The statute in question provides that an assessment "shall be assessed in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated for," qualifying offenses.

X.S. v. State, 2D21-2712 (Feb. 8, 2023)

An adjudication for being a delinquent minor in possession of a firearm was reversed because the State failed to establish the corpus delicti of the offense."

An officer was conducting an investigation at a hotel and X.S. was present at the scene. The officer observed a "black pistol box under the rear passenger seat" of a car and, upon entering the car, opened the box and found a pistol. Another officer arrived to pick up X.S. whom she knew to be 16 years old. She heard him tell his mother, who was nearby, that the police found his gun.

Corpus delicti may not be established solely by a confession; corroborative evidence to support the admitted facts is necessary. Here, there was no information regarding ownership or control of the vehicle that was searched. X.S.'s presence near the vehicle was not sufficient. With respect to the State's argument that the statements were admissible because they arose out of the res gestae, contemporaneously with the main fact, the Court referred to res gestate principles

ass "anachronistic common law components" of current provisions of the Evidence Code – s. 90.803, Florida Statutes.

Third District Court of Appeal

Mesa v. State, 3D21-1960 (Feb. 8, 2023)

A restitution order was vacated for further proceedings. Mesa had filed a Rule 3.800(b) motion contesting the restitution order. The State then conceded that an evidentiary hearing was required to impose restitution over a defendant's objection. The court conducted the evidentiary hearing but failed to enter an order within 60 days. As a result of the failure to enter an order within 60 days, the motion was deemed denied in the trial court. The Third District remanded for a new restitution hearing.

R.A. v. State, 3D22-0546 (Feb. 8, 2023)

The Third District affirmed an adjudication of delinquency for battery on a law enforcement officer. R.A. argued that the officer impermissibly detained her and was therefore not engaged in the lawful performance of legal duties at the time. The Court, applying the community caretaking doctrine, concluded that the detention of R.A. was lawful and that the officer was engaged in the lawful performance of a legal duty.

An officer observed R.A. at about 9:20 p.m. "sitting alone in a dark corner of a breezeway next to the entrance" of a high school. The school was closed, and the area was referred to by the officer as "our highest crime area." The officer was concerned about the girl being alone at that time and in that area and approached, asking "if she was all right, why she was there, if her parents knew where she was, and why she looked scared. R.A. responded that she was fine and not scared." Video evidence revealed "a tone and tenor that belied R.A.'s representations. R.A. answered tentatively and appeared, if not scared, then, at a minimum, hesitant and unsure." The officer asked for her name and age, and she gave her name and said she was 17 years old. She responded that her parents knew where she was, "explaining that she'd attempted to visit a friend who lived nearby but he wasn't home"

"R.A. claimed she was waiting for a bus home, but she took shelter in the school entryway to wait for the rain to pass." It was not raining at the time; there had been no recent rain. R.A. did not have a cell phone, ID or bus pass, "and she

didn't know which bus she was looking for or when she expected it." She said she knew how to get home safely. After she said that she had lost her phone a few days prior and did not remember her number, the officer inquired about calling her parents to have them pick her up. She said that they did not have phones, her mother did not have a car, and her father was working.

The officer had R.A. wait while contacting DCF, and then learned that R.A. was 16 and had given an incorrect spelling of her last name. The mother could not be located and the address could not be confirmed.

A second officer arrived and R.A. fled. When she was caught, she was handcuffed and placed in a police vehicle. During the ensuing period of custody, R.A. was observed kicking the partition between the vehicle's seats, and she then kicked at the officers, hitting one in the chest, while they were attempting to hold her down "and place her in leg restraints."

The Third District concluded that under the community caretaking function, the could take R.A. into custody. The key to this doctrine was "reasonableness," which is based on "the totality of existing circumstances." Given the time of the incident, the high-crime area, the closed location, and R.A.'s presence alone, the facts supported the officers acting under the community caretaking doctrine.

One judge dissented. The dissent emphasized that the charging document identified "detention and/or arrest" as the legal duty the officer was engaged in, which was incongruous with the State's reliance on the community caretaker function on appeal. The dissent also found that R.A. was not disoriented and her behavior did not suggest "any sort of health emergency."

Fourth District Court of Appeal

Barrett v. State, 4D21-1693 (Feb. 8, 2023)

The Fourth District affirmed a revocation of probation, but reversed the sentence for further proceedings.

Although the trial court was alleged not to have repeated a full Faretta inquiry at the first appearance on the VOP allegations, the Fourth District quoted from a prior Florida Supreme Court decision for the point that absent a substantial change in circumstances from the original ruling on self-representation, there was no

requirement to revisit Faretta every time an offer of counsel is subsequently renewed and rejected.

The failure to renew the offer of counsel at sentencing, however, did result in reversible error and was not harmless. The offer must be renewed at each subsequent stage of the proceedings at which the defendant appears without counsel.

Etienne v. State, 4D21-2599 (Feb. 8, 2023)

The Fourth District withdrew its prior opinion on rehearing and issued a new opinion. The trial court failed to conduct a required Richardson hearing in light of a possible discovery violation, but the error was harmless.

During cross-examination, the victim stated that he had sent copies of messages from his phone to the first prosecutor in the case and that a subsequent prosecutor acknowledged receipt of the messages. The trial prosecutor was unaware of the messages. During a bench conference, the trial prosecutor checked the State's file but did not find the messages. The prosecutor argued that a Richardson hearing was not needed because there was no intentional conduct by the State. The court did not conduct the hearing.

The Fourth District wrote its opinion to emphasize that an inquiry is needed whenever there is a potential discovery violation, regardless of whether it was intentional. The lack of intent is one of the three factors of the actual Richardson inquiry. The court still has to consider the other two factors – whether the violation was substantial or trivial and whether there was prejudice on the aggrieved party's ability to prepare for trial.

The failure to conduct the inquiry was subject to harmless error review and the error was harmless. Evidence included a video of the incident, "which corroborated the victim's version of events, and showed appellant hitting the victim" The sole theory of defense was that the defendant acted in self-defense. The Appellant did "not argue on appeal how she would have pursued a different defense or trial strategy if she had possession of the alleged messages." The text messages at issue were "threatening" messages from the defendant to the victim, which resulted in the victim trying to get a restraining order.

Obermeyer v. State, 4D22-487, 4D22-503 (Feb. 8, 2023)

The summary denial of a Rule 3.850 motion was reversed for an evidentiary hearing. The defendant alleged that counsel was ineffective "for failing to advise him that the evidence was legally insufficient to support the plea."

The defendant entered a guilty plea to charges of conspiracy to traffic in hydromorphone and second-degree felony murder. The defendant made numerous admissions "regarding his role in an overall pill mill scheme, the stated goal of which was to make money without regard for the patients' well-being." The record, however, did not conclusively refute the claim. The alleged trafficking conspiracy served as the underlying felony for second-degree felony murder.

The only record evidence of the amount of drugs administered or prescribed on the date alleged in the information was for an amount much less than the 14-28 grams set forth in the charging document. The State argued that the conspiracy was not limited to the single prescription on the one date in the information but for a substantial period of time. That argument failed in light of a Bill of Particulars in which the State listed only the named victim for this conspiracy count.

Love v. State, 4D22-1009 (Feb. 8, 2023)

The Fourth District quoted an earlier decision for the point that "documentary evidence is not always a prerequisite to establishing an amount for an award of restitution."

Burns v. Mascara, 4D22-3346 (Feb. 8, 2023)

A habeas corpus petition was granted and the case remanded for the trial court "to make the factual findings required for continued pretrial detention or to set bond." The defendant was held without bond after violating conditions of pretrial release by failing to report for a drug test. Motions to set bond were denied twice and the judge stated that the defendant's testimony was not in "the least bid credible." The State had not moved for pretrial detention.

Fifth District Court of Appeal

Littles v. State, 5D22-944 (Feb. 7, 2023)

The trial court erred in denying a motion to suppress. An officer stopped the defendant for a traffic infraction based on the officer's belief that the defendant, who was in a car in front of the officer, changed lanes from a left-turn lane to a thru lane in the intersection. The defendant maintained that he had been in the thru lane. The trial court judge found that Littles was not in the turn lane and did not illegally change lanes in the intersection, but also found that the intersection was confusing due to construction and different visual angles produced different appearances. As a result, the judge concluded "that the officer's mistake was an objectively reasonable one and thereby denied the motion to suppress."

The Fifth District, in reversing, emphasized that the "officer's subjective view" was "demonstrably incorrect" and was "not relevant where the evidentiary record demonstrates it is untenable." The court "give leeway to allow for mistakes, provided they are objectively reasonable." The appellate court found that "nothing about the intersection would confuse an objectively reasonable person, let alone an officer with knowledge of the local roadways and conditions." "An objectively reasonable police officer, at a minimum, should know and be aware of the traffic lane in which his vehicle is traveling, particularly in the absence of factors demonstrating a basis for error such as poor visibility, a lack of roadway or lane markings, or confusing signage or signaling; none of these factors is present." Thus, "[b]ecause the officer's mistake of fact was not objectively reasonable, the traffic stop was improper for the outset, making it unnecessary to address issues related to what occurred thereafter."

Sixth District Court of Appeal

Stewart v. State, 6D23-1236 (Feb. 10, 2023)

The Sixth District granted a petition alleging ineffective assistance of appellate counsel. On one of several counts, the jury did not return a specific finding that the defendant "carried, displayed used, threatened to use, or attempted to use any weapon or firearm during the commission of the crime." The offense at issue was a first-degree felony, but the judge, on the judgment, referenced it as a life felony. Stewart now claimed that counsel was ineffective for not arguing that this charge was improperly reclassified without the required jury finding.

Although finding that counsel was deficient for not raising the issue, the Sixth District, rather than granting relief and correcting the judgment, granted a new appeal in which Stewart could raise the issue.

Vega v. State, 6D23-1161 (Feb. 10, 2023)

The Sixth District affirmed the denial of a Rule 3.850 motion in which the defendant, who had been convicted of first-degree murder and aggravated child abuse of a three-year-old boy in his charge, alleged newly discovered evidence.

The motion alleged that subsequent to the trial, new medical studies undermined the testimony of the prosecution's expert at trial and purported showed that "at the time of the trial, the prevailing medical opinion held that a short-distance fall could not cause death, but now the prevailing view is otherwise." The Fifth District previously granted Vega an evidentiary hearing on this issue.

At the evidentiary hearing, Vega presented an expert witness. That witness, while criticizing portions of the report of the State's expert witness from the trial, "did not say Dr. Gore's opinion was wrong, only that Dr. Gore did not have sufficient data to render his opinion." The appellate court accepted, for the sake of argument, the new testimony about the change in medical opinion. That, however, created a further question: "how that new opinion would be applicable to the evidence at trial." Ultimately, the Sixth District concluded that "nothing in the newly produced studies is inconsistent with Dr. Gore's testimony [from the trial] in any significant way."

Additionally, although the defense expert provided an affidavit that was appended to the postconviction motion, and that affidavit asserted that "based upon the available forensic data, it is absolutely reasonable that [the victim] died from an accidental fall," no testimony to that effect was presented at the evidentiary hearing.

Vega failed to sustain his burden at the evidentiary hearing.

Maye v. State, 6D23-1438 (Feb. 10, 2023)

The Sixth District rejected an Apprendi claim, citing several prior decisions for the holding that a PRR sentence was not unconstitutional because the findings regarding recidivism were made by a judge and not a jury.