Case Law Update
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Eleventh Circuit Court of Appeals

United States v. Heaton, 20-12568 (Feb. 14, 2023)

The Eleventh Circuit affirmed convictions for 27 counts of aiding and abetting the acquisition of controlled substances by deception and 102 counts of unlawfully dispensing controlled substances.

Heaton challenged the jury instructions for the offenses under 28 U.S.C. s. 841(a). He did not dispute that he knowingly and intentionally dispensed the substances. He contended that his "dispensing was not 'outside the usual course of professional practice'" and "his prescriptions were issued for a 'legitimate medical purpose.'" When the court gave the instructions, it told the jury that the government had to prove that the dispensing "was outside the usual course of professional practice or for no legitimate medical purpose." The jury was also instructed that a "good faith belief that he dispensed a controlled substance in the usual course of professional practice is not a defense to the charge if he dispensed the controlled substances 'outside the usual course of professional practice.'" And, whether he "dispensed the controlled substances 'for no legitimate medical purpose' does not depend on his subjective belief.'"

The first argument on appeal was that the use of the word "or" in the instructions was erroneous; that the government had to prove that the controlled substances were prescribed both outside the course of professional practice and for no legitimate medical purpose. The Eleventh Circuit rejected that argument on the basis of the plain language of C.F.R. s. 1306.04(1), which regulation had two requirements – the legitimate medical purpose and acting in the usual course of the professional practice.

Heaton also argued that the instruction on mens rea was erroneous, based on the recent decision in Ruan v. United States, 142 S.Ct. 2370 (2022). The district court's instruction that the determination of whether the dispensation was outside the usual course of professional practice was to be judged "objectively" was erroneous under Ruan. The erroneous instruction constituted harmless error however. The government "presented overwhelming evidence that Heaton

subjectively knew his conduct fell outside the usual course of his professional practice." An expert witness testified that Heaton regularly failed to comply with Medical Board rules by failing to obtain prior medical records of patients regarding pain complaints; not conducting credible physical examinations; not monitoring patient compliance with the prescribed medications and not properly documenting prescriptions issued to the patients. The Eleventh Circuit opinion goes through one patient's file, showing the ways in which Heaton failed to comply with those requirements. As to one patient, "Heaton continued to prescribe Gowder pain medications despite clear signs that Gowder was abusing his medication."

As to a second patient, with whom Heaton was having a sexual relationship for which the impropriety had already resulted in an earlier warning by the Medical Board, the patient file also reflected poor recordkeeping. Again, Heaton "ignored obvious red flags that T.G. was abusing her medication." He knew that she had abused heroin before becoming his patient. After she was arrested for three DUIs, Heaton prescribed 150 pills of methadone, while aware of those DUIs. Similar points were made with respect to a third patient.

The Court also rejected an argument that s. 841 was unconstitutionally vague as applied with respect to the phrase "in the usual course of his professional practice." The Eleventh Circuit had previously rejected the same claim and relied on its prior decision. Heaton tried to argue that the earlier case was decided "before the relevant case law devolved into a 'state of muddled confusion.'" The Court disagreed, identifying five examples of behavior that the Court had previously found to have violated the statute: "prescribing an excessive quantity of controlled substances;" "issuing large numbers of such prescriptions;" "failing to physically examine patients;" "prescribing controlled drugs at intervals inconsistent with legitimate medical treatment;" and "issuing prescriptions for drugs that had no logical relationship to the treatment of the patients' alleged condition."

Supreme Court of Florida

Dillbeck v. State, SC23-190, SC23-220 (Feb. 16, 2023)

The Florida Supreme Court affirmed a fourth successive Rule 3.851 motion and denied a habeas corpus petition.

Dillbeck first argued that he was exempt from execution "because he has a mental condition that is equivalent to intellectual disability." Although he had an average IQ of 98-100, "he has been diagnosed with a fetal alcohol spectrum disorder

called neurodevelopmental disorder associated with prenatal alcohol exposure (ND-PAE)." This was presented as a claim of newly discovered evidence and was both untimely and procedurally barred. If it was not a newly discovered evidence claim it was not cognizable in a successive postconviction motion. Alternatively, the claim was without merit.

The claim depended on the ND-PAE diagnosis, and here, years ago, the Supreme Court affirmed the dismissal of an earlier Rule 3.851 motion as untimely "because we held that Dillbeck and his counsel had failed to diligently pursue a diagnosis of ND-PAE." Dillbeck tried to avoid that procedural bar by relying on a 2021 article regarding ND-PAE. However, new opinions based on preexisting data and scientific information are not generally considered newly discovered evidence. Regardless, the scientific consensus for the claim existed since 2021 and the most recent 3.851 motion was not filed within one year of when that could have and should have been discovered.

The claim was also without merit. The relevant United States Supreme Court decision shielding the intellectually disabled from execution "does not apply to individuals with other forms of mental illness or brain damage." It applies to intellectual disability, as defined in the Supreme Court decision. Dillbeck's claim acknowledged that it was not an intellectual disability when he asked the Court to treat it as the "equivalent" of an intellectual disability.

Dillbeck also argued that there was newly discovered evidence regarding the prior violent felony aggravator that was used to support the imposition of the death penalty. The prior violent felony was a 1979 conviction. After the signing of the current death warrant by the Governor, Dillbeck's attorney obtained statements from five witnesses to Dillbeck's "bizarre" behavior surrounding the 1979 shooting of a deputy sheriff. Those statements then resulted in two doctors giving new opinions regarding Dillbeck's diminished capacity during the 1979 murder, adding that he was insane at the time and incompetent when he pled guilty to the prior murder. This claim of newly discovered evidence was untimely, as the evidence could have been discovered with due diligence decades earlier.

Dillbeck described his own behavior in both his 1979 plea colloquy and his 1991 penalty phase testimony in this case. Some witness statements from 1979 referred to other people who were present and it was thus "clear that law enforcement did not take statements from everyone and that there were other potential witnesses to question."

Additionally, this new evidence would not probably have resulted in a sentence less than the death sentence. The death sentence had been based on five aggravating factors, and the sentencing court accepted as mitigation, with little weight, multiple factors, including Dillbeck's substantial impairment, fetal alcohol effects, treatable mental illness, and several others.

In a separate habeas corpus petition, the Court rejected the argument that the HAC aggravator was facially invalid because it was vague, overbroad, "and fails to serve the narrowing function required by the United States Constitution." This claim was procedurally barred and meritless. Habeas corpus cannot be used as a second appeal for claims that could have been raised on direct appeal. The Court has also previously rejected the overbreadth and vagueness claims in other decisions.

Walls v. State, SC22-072 (Feb. 16, 2023)

The Florida Supreme Court affirmed the denial of a successive motion for postconviction relief under Fla.R.Crim.P. 3.851.

Walls raised an intellectual-disability claim based on Hall v. Florida, 572 U.S. 701 (2014), which rejected the prior bright-line test that Florida case law had adhered to. An evidentiary hearing was held in the trial court, and that court concluded that Hall did not apply retroactively, and that Walls failed to prove intellectual disability. The Supreme Court did not reach the issue of whether an intellectual disability was established under Hall, holding only, in accordance with the Florida Supreme Court's own precedent, that Hall did not apply retroactively, and Walls' death sentence became final in 1995.

First District Court of Appeal

Alqadi v. State, 1D21-2914 (Feb. 15, 2023)

The First District affirmed a conviction and sentence for attempted first-degree murder. Prior to entering a no-contest plea, Alqadi had filed a motion to dismiss based on self-defense immunity. On appeal, the First District concluded that the State satisfied its burden at the evidentiary hearing and overcame Alqadi's self-defense claim by clear and convincing evidence.

Alqadi alleged in his motion to dismiss that he had been sleeping in his bedroom when his roommate entered and began hitting him and Alqadi awoke and engaged in efforts to defend himself. At the evidentiary hearing, the State presented

evidence which included Alqadi's statement about waking up to being hit, but denying that he hit anyone. The victim testified that he, the victim, had been in the living room, watching television, and that he never entered the bedroom. He remembered only waking up at the hospital with serious injuries to his head. One eyewitness observed Alqadi "acting crazy" and saw him hitting the victim over the head with a candlestick, adding that he had to push Alqadi off the victim. A second eyewitness who was in the residence woke up at 4:30 a.m. and heard a loud beating noise and saw Alqadi with a wooden candlestick in his hand, with the victim bent over the couch, hyperventilating, and blood was everywhere. Alqadi had only a small abrasion to his right hand and the victim sustained multiple injuries.

Second District Court of Appeal

Department of Children and Families v. Botes, 2D22-1198 (Feb. 15, 2023)

During a pending criminal case, the trial court found Botes incompetent to proceed and had him committed to DCF for care. DCF challenged that order and the Second District granted DCF's petition for writ of certiorari because "the record was devoid of clear and convincing evidence that Mr. Botes' condition would respond to treatment or that he would regain competency in the foreseeable future."

Commitment under section 916.13(1), Florida Statutes, requires proof of "mental illness." Botes' incompetency was caused in part by a traumatic brain injury and that is statutorily excluded from the definition of mental illness. However, Botes also had other mental illnesses that contributed to his incompetency.

Testimony was presented from three doctors. One concluded Botes was competent; the others that "further evaluation is required to determine whether or not Mr. Botes' competency may be restored." As a result, there was no testimony that competency could be restored and that is one of the requirements for commitment to DCF under section 916.13(1).

Fourth District Court of Appeal

T.R.W. v. State, 4D21-2396, et al. (Feb. 15, 2023)

The Fourth District reversed an order adjudicating T.R.W. delinquent for communicating a written threat to do bodily harm or commit a mass shooting.

T.R.W. sent text messages to another student, including one that said "at this point I might just start killing people." While the second student responded that she was scared, T.R.W. wrote "its just a prank." The second student responded that she could not tell if it was a joke and T.R.W. responded that "for I dead killed somebody." At the trial, T.R.W. denied possessing his phone when the messages were sent and further denied writing the messages in question. The trial court, in finding that T.R.W. committed the offense, rejected consideration of intent in sending the texts.

The Fourth District's opinion includes a lengthy survey of law regarding a mens rea element and concluded that "a mens rea element must be read into section 836.10. A defendant must have intended to make a true threat, namely that he made a communication with the knowledge that it will be viewed as a threat." The trial court thus erred in failing to consider intent.

The trial court also erred in revoking probation based on uncharged conduct. T.R.W. was charged with failing to complete community service hours, and the trial court made no finding as to that, concluding instead that T.R.W. failed to provide written documentation of the hours, something that had not been charged. Although the failure to report service hours might support an inference that there was a failure to complete the hours, "that inference would deny T.R.W. due process," and T.R.W. was not "prepared to mount a full defense" to the charge of failing to report the hours. The trial court judge had further found that "it could not make a finding that community service hours were not completed."

The Court further certified conflict with Smith v. State, 532 So. 2d 50 (Fla. 2d DCA 1988) "on the issue of the mens rea required in section 836.10, Florida Statutes. As this issue has arisen in multiple cases due to the posting of messages on social networks, clarity on the correct interpretation of the statute is needed."

Hostzclaw v. State, 4D21-2557 (Feb. 15, 2023)

This case had a lengthy pretrial history of competency proceedings, Faretta inquiries, and Nelson hearings, and, after reversals along the way regarding self-representation, the defendant ended up being represented by counsel at trial. Defense counsel refused to assert an insanity defense that the defendant wanted to pursue, and the Fourth District reversed "[b]ecause pleading not guilty by reason of insanity is tantamount to a plea decision, which is a fundamental right of the defendant." The court therefore "erred in disallowing the presentation of an insanity defense."

While insanity is an affirmative defense, "'the decision to raise the defense is akin to a plea decision.'" Although defense counsel advised the trial court that there was no evidence to support an insanity defense, the Fourth District found that the "record is not so clear." There were multiple competency examinations, but none for insanity at the time of the offense. An evaluation that was done three days after the offense included observations that the defendant was "'exhibiting multiple potential signs of a mental disorder that could be related to severe situational stressors, chronic substance abuse, a severe personality disorder, general medical conditions, or psychiatric disorder.' Both in his motions and in the competency evaluation history, he reported mental health issues commencing as a child. He was hospitalized at least twice in psychiatric facilities. While in prison, he was treated for mental health issues. He has attempted suicide multiple times. After his release from prison, before the robbery, appellant alleged that he was involved in an accident for which he was prescribed several medications, that he claimed affected his memory. He claims not to remember committing the offense at all. Finally, the probable cause affidavit states that when approached by police, he called on them to shoot him" As there was some evidence from which a jury might find insanity a meritorious defense, the error in precluding the defendant from presenting the defense was not harmless.

Buonanotte v. State, 4D22-826 (Feb. 15, 2023)

The Fourth District affirmed convictions for DUI causing property damage or injury, and resisting an officer with violence. The defendant sought to suppress evidence of blood alcohol content, obtained via a blood draw, arguing that the State "failed to prove that a breath test was impossible or impractical," as required under the implied consent statute.

After the accident, in which airbags deployed and one car rolled over, the defendant was taken to the hospital and Fire Rescue personnel had to administer an anesthetic and sedative due to the defendant's erratic emotional state. Video evidence from the hospital showed the defendant in a bed and in a neck brace. An officer tried to speak to her, "but she was incoherent, so he asked hospital staff for a blood draw."

With respect to the need for the blood draw, the Fourth District first noted that one alternative, a urine test, was "impractical because the defendant was suspected of impairment due to alcohol consumption and, for the purposes of section 316.1932, '[b]reath and blood tests detect alcohol content, whereas urine tests detect controlled substances.'" As to the breath test, mere inconvenience "will not demonstrate

impossibility or impracticality." The evidence in this case clearly supported the conclusion that the breath test was impossible or impractical. The defendant, prior to the sedative, had been "yelling, thrashing, and refusing to cooperate for an extended period of time." An officer tried to restrain her, but she "repeatedly slipped out of her handcuffs and would not sit when she was in the back of the police car." And, at the hospital, medical personnel advised the officer that the defendant could not be released to him for a few hours, due to the need to evaluate injuries, and the officer therefore could not administer a breath test. The failure of the officer to ask for consent was not dispositive, as the defendant had been in a stupor and could not respond coherently to basic questions.

Fifth District Court of Appeal

Guida v. State, 5D22-2694 (Feb. 15, 2023)

The Fifth District granted a prohibition petition based on stand your ground immunity. The defendant was charged with two counts of domestic battery – one against his wife, one against his son. There had been a dispute which started with the son playing loud music in the middle of the night in his office in the family home.

The trial court judge denied the motion orally, but made statements, which are not set forth in the appellate court's opinion, indicating "that the court did not resolve the highly uncertain and conflicting accounts of the altercation." "Nor did its oral pronouncement suggest, by any means, that it was convinced by the sum total of the evidence 'without hesitancy' that the State established that petitioner was not entitled to immunity." The trial court was ordered to "enter an order finding Petitioner immune from prosecution."

Sixth District Court of Appeal

State v Hickman, 6D23-431 (Feb. 17, 2023)

The Sixth District reversed an order suppressing drugs found in a car in which Hickman was a passenger.

An officer responded to a citizen complaint about a car "backed in on the roadway near the guardrail in [an] area where there was a vacant lot" in a residential neighborhood. "The caller worried that the car's occupants were 'casing' the neighborhood."

The officer observed Tompkins sitting in the driver's seat "and her car was indeed backed in and parked at the dead end of a two-lane unmarked residential street, adjacent to a vacant lot and next to a no-parking sign." When the officer approached the car, he was not aware that it was a no-parking zone and did not believe the driver was committing any traffic or criminal offense. The driver lowered her window and the officer observed drugs and drug paraphernalia in open view. The search incident to arrest "revealed drugs in a backpack at Hickman's seat."

The appellate court first rejected the lower court's finding that there was no clear evidence of a parking violation. The officer testified that it was a no-parking zone and there was photo evidence of the sign, as well as dashboard camera evidence as to the car's location. The trial court also erred in relying on the officer's subjective intent in stopping Tompkins. Subjective intent is generally not relevant to Fourth Amendment probable cause analysis. Probable cause for a stop existed because the car was parked illegally.