

CRIMINAL JUSTICE

Criminal Justice: Battery Statute

Munoz-Perez v. State,
942 So. 2d 1025 (Fla. 4th Dist. App. 2006)

The use of a deadly weapon under Florida's aggravated battery statute requires that the weapon actually touch the victim's body.

FACTS AND PROCEDURAL HISTORY

The defendant was convicted of aggravated battery with a knife after he entered the victim's house, grabbed her, and held a knife close to her throat. The knife never touched the victim's body. The defendant appealed his conviction, claiming that the weapon must touch the victim in order to constitute an aggravated battery. The Fourth District Court of Appeal reversed the conviction.

ANALYSIS

"A person commits aggravated battery who, in committing battery . . . [u]ses a deadly weapon." Fla. Stat. § 784.045(1)(a)(2) (2002). The Fourth District held that "the element 'uses a deadly weapon' in the aggravated battery statute means using the weapon to commit the touching that constitutes the battery." *Munoz-Perez*, 942 So. 2d at 1028. The court relied on the Florida Supreme Court's determination in *State v. Baker*, 452 So. 2d 927 (Fla. 1984), that the Legislature has distinguished using weapons from carrying weapons in Florida's statutes. Furthermore, the defendant cited to three cases where the carrying of a weapon with no touching to the victim's body constituted only attempted aggravated battery.

SIGNIFICANCE

Whether the deadly weapon must touch the victim's body during the commission of the battery to constitute aggravated battery is an issue of first impression. Currently, all Florida trial courts are bound to follow the Fourth District's holding. If the victim was not substantially harmed, prosecutors cannot charge the

defendant with aggravated battery if the deadly weapon did not touch the victim.

RESEARCH REFERENCE

- 15B Fla. Jur. 2d *Criminal Law* § 3263 (Westlaw database updated Aug. 2007).

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Criminal Justice: DNA Testing

Grayson v. King,
460 F.3d 1328 (11th Cir. 2006)

The United States Court of Appeals for the Eleventh Circuit does not recognize a broad constitutional right for all convicted defendants to access biological evidence for DNA testing.

FACTS AND PROCEDURAL HISTORY

Darrell Grayson was convicted of capital murder and sentenced to death in Alabama state court in 1982. Grayson, along with another man, planned and carried out the burglary of an elderly woman's home. During the course of the burglary the two men taped a pillowcase over the woman's face, repeatedly raped and beat her, then left her for dead. The State presented biological evidence at trial, including expert testimony regarding blood and semen found at the crime scene. While the biological evidence did not conclusively establish Grayson's guilt, the State also presented overwhelming non-biological evidence, including Grayson's detailed confessions to police, his trial testimony admitting his role in the crime, the victim's wedding rings found in Grayson's wallet, Grayson's bloody shirt found near his home, and the fact that Grayson was discovered hiding in the woods shortly after the crime was committed. At the time of Grayson's trial and conviction, DNA testing was not yet available.

Grayson's conviction and sentence were upheld on direct appeal. For fifteen years thereafter Grayson filed numerous petitions for post-conviction relief in both state and federal court, all of which were denied. In 2002, Grayson filed a motion in the state trial court seeking to obtain the state's biological evidence used

against him at trial in order to have DNA tests conducted on the evidence. Grayson did not claim that he was actually innocent, but that he wanted to be sure of his guilt before his upcoming execution. The state trial court denied Grayson's motion on the grounds that it lacked jurisdiction. Grayson then filed a 42 U.S.C. § 1983 action in federal district court, asserting that he had a federal constitutional right to obtain the biological evidence. The district court dismissed his action, and Grayson appealed. On appeal, Grayson contended that the Due Process Clause of the Fourteenth Amendment afforded him a right to access the evidence. The Eleventh Circuit affirmed the district court, holding that Grayson did not have a constitutional right to the evidence under the factual circumstances of his case.

ANALYSIS

Grayson first argued that denying him access to the evidence violated his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. *Brady* requires the State to relinquish, upon request, evidence that is favorable to the defendant when that evidence is material either to the defendant's guilt or punishment. The Supreme Court has clarified that evidence is material when there is a reasonable probability that the defendant's possession of the evidence would have altered the outcome of the trial. The Supreme Court has further clarified that reasonable probability exists where confidence in the outcome is undermined by the state's suppression of the evidence. The court rejected Grayson's arguments under *Brady*.

The court first noted that *Brady* and its progeny involved suppression of evidence before and during trial, such that denying the defendant access to the evidence deprived him or her of a fair trial. Grayson did not argue that the State suppressed the biological evidence before or at his trial, or that his trial was unfair; rather, he argued that the State's constitutional obligations under *Brady* continued even after his trial and conviction. To support his argument, Grayson pointed to a footnote in *Imbler v. Pachtman*, 424 U.S. 409 (1976), in which the Supreme Court stated that a prosecutor has an ethical duty to disclose exculpatory evidence discovered after a conviction. The court rejected this argument, explaining that while the State maintains an ethical obligation to disclose exculpatory evidence discovered after a trial,

the State's due process obligation exists only before and during the trial itself. The court also noted that the evidence sought by Grayson was not discovered after his trial but was accessible and used during trial.

Grayson further argued that, even if the evidence was outside the scope of *Brady*, the State's refusal to grant him access amounted to a bad faith destruction of evidence in violation of *Arizona v. Youngblood*, 488 U.S. 51 (1988). *Youngblood* provides that a defendant's due process rights are violated if the state in bad faith fails to preserve evidence that might be exculpatory. The court rejected this argument as well, refusing to equate the State's denial of access with bad faith destruction. The court noted that the evidence was in fact preserved and that the evidence could be tested if Grayson had a right to access it. The court went on to emphasize that Grayson had received a fair trial, noting the overwhelming evidence presented against him, and that Grayson did not contest his actual guilt. The court also pointed out that DNA testing performed by Grayson could not prove his actual innocence. The court concluded that because Grayson received a fair trial during which the evidence sought was available, he did not assert a right to "material, exculpatory evidence necessary to ensure a fair trial" and, therefore, did not have a valid claim under *Brady*. *Grayson*, 460 F.3d at 1340 (citing *Brady*, 373 U.S. at 87).

Grayson next argued that the State's denial of access violated his right to procedural due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Supreme Court in *Mathews* established a balancing test to determine whether due process concerns require procedural safeguards when the government seeks to deprive a person of a liberty or property interest. The balancing test looks at the following three factors: (1) the individual interest affected by the government's action; (2) the risk that a person will be erroneously deprived of such an interest by virtue of the procedures used, and the probable value of added or substitute procedural safeguards; and (3) the government interests at stake. Grayson argued that under this balancing test he had a constitutional right to the evidence. The court rejected Grayson's argument.

The court first raised the question of whether a liberty interest, within the meaning of due process, continues after conviction

and sentencing. The court declined to answer this question, opining that, even if *Mathews* applied to Grayson's situation, the balancing test would favor the State. The court reasoned that the second and third factors of the test weighed heavily against Grayson's argument. The court again pointed to the fact that Grayson had received a fair trial and noted that Grayson's liberty interest had been litigated for twenty years through various proceedings and appeals. Under these circumstances, the court concluded that the risk of erroneous deprivation was low and that Grayson's post-conviction access to the biological evidence would be of minimal probative value. The court reasoned that the State, by contrast, had a strong interest in protecting the finality of properly obtained convictions.

The court acknowledged a concurring opinion, from *Harvey v. Horan*, 285 F.3d 298 (4th Cir. 2002), which argued that, in limited circumstances, a defendant may have a procedural due process right to previously available evidence for DNA testing. The court noted, however, that the right espoused in the *Harvey* concurrence was limited to defendants who maintained their factual innocence and to evidence that could prove such innocence. The court noted that Grayson's case did not fall within these limitations. In affirming the dismissal of Grayson's action, the court declined to decide whether there could ever, under any circumstances, be a constitutional right of post-conviction access to evidence to conduct DNA testing. The court limited its holding to a determination that, under the circumstances of this case, Grayson did not establish such a right. The court acknowledged that a majority of state legislatures have enacted statutes entitling defendants to post-conviction DNA testing. The court refused, however, to create a broad constitutional right entitling all defendants to such post-conviction access. The court noted that while lower courts seem to be split on this issue, only two other circuit courts have addressed it. Both the Fourth and Sixth Circuits have refused to recognize such a broad constitutional right.

SIGNIFICANCE

Grayson is significant to practitioners because it is the first Eleventh Circuit case to address a convicted defendant's federal constitutional right to access biological evidence for DNA testing. The case does not determine whether a convicted defendant can

ever have such a right. However, the case makes clear that a defendant does not have such a right in all cases.

RESEARCH REFERENCE

- 14B Fla. Jur. 2d *Criminal Law* §§ 1445–1452, 1523 (Westlaw database updated Aug. 2007).

Courtney Lynne Fish

Criminal Justice: Sentencing

***Coppola v. State,* 938 So. 2d 507 (Fla. 2006)**

The holding in *Heggs v. State*, which invalidated Florida's 1995 sentencing guidelines, is not so constitutionally and fundamentally significant as to require retroactive application pursuant to a motion filed under Rule 3.850 of the Florida Rules of Criminal Procedure. Further, for the purposes of Rule 3.850(b)(1), a newly discovered fact must be one that tends to prove or disprove the defendant's guilt or innocence and cannot be decisional law that affects a defendant's sentence. Additionally, a defendant sentenced pursuant to a negotiated plea is entitled to have that sentence corrected on the ground that the sentencing guidelines in effect at the time of the sentence were unconstitutional only if the negotiated plea was for a sentence in accord with the guidelines and not merely for a specific term of years.

FACTS AND PROCEDURAL HISTORY

Charged with first-degree murder for a crime that occurred in March 1997 and facing the death penalty or life in prison, Coppola, in July 1998, agreed to plead guilty to second-degree murder in exchange for a thirty-five-year sentence. In July 2000, Coppola filed a motion to correct an illegal sentence under Rule 3.800 of the Florida Rules of Criminal Procedure, arguing that resentencing was required under the recently decided *Heggs v. State*, 759 So. 2d 620 (Fla. 2000). However, the trial court disagreed and denied Coppola's motion and the Fifth District Court of Appeal affirmed.

In April 2001, Coppola filed a motion for post-conviction relief under Rule 3.850, arguing that had he known at the time of his plea that the sentencing guidelines in effect were unconstitutional, he would not have entered a guilty plea and therefore his plea should be treated as involuntary. The trial court denied this motion and the Fifth District affirmed, finding that (1) Coppola's motion was untimely because it was not filed within two years of his conviction, and the *Heggs* decision did not constitute a "newly discovered fact" for the purposes of the Rule 3.850(b)(1) exception to the two-year time limit; and (2) even if Coppola's motion was timely filed, it would require denial because Coppola's sentence was imposed pursuant to the plea negotiations, not the unconstitutional sentencing guidelines.

Based on the apparent conflict of the Fifth District's ruling with decisions issued by the Second and Fourth District Courts of Appeal, the Florida Supreme Court granted Coppola's petition for review and affirmed the decision of the Fifth District.

ANALYSIS

The Florida Supreme Court began its analysis by noting that in *Heggs* Florida's 1995 sentencing guidelines, which were in effect at the time Coppola was sentenced, were held unconstitutional because they violated the Florida Constitution's single-subject rule. The Court then noted the conflict among the district courts of appeal, brought to issue in this case, regarding whether a petitioner whose conviction has been final for more than two years is prohibited from seeking *Heggs* relief via a Rule 3.850 motion to correct a judgment or sentence.

Under Rule 3.850, a defendant must file her motion to vacate, set aside, or correct her sentence within two years after the conviction and sentence become final. However, subsection (b)(1) of Rule 3.850 provides an exception to this two-year time limit when "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence." In ruling on Coppola's 3.850 motion, the Fifth District held that the *Heggs* decision does not constitute a newly discovered fact for the purposes of Rule 3.850(b)(1) and cannot be applied retroactively under Rule 3.850. This ruling conflicted with *Murphy v. State*, 773 So. 2d 1174 (Fla. 2d Dist. App. 2000) and *Jenkins v. State*, 771 So. 2d 37 (Fla. 4th

Dist. App. 2000), both of which held that a defendant may file a *Heggs*-grounded motion to correct a sentence within two years after the issuance of *Heggs* because the *Heggs* decision constituted a newly discovered fact under Rule 3.850(b)(1).

In resolving this conflict, the Florida Supreme Court considered and agreed with the First District Court of Appeal's opinion in *Regan v. State*, 787 So. 2d 265 (Fla. 1st Dist. App. 2001). In *Regan*, the court found that *Heggs* could not constitute a newly discovered fact for the purposes of Rule 3.850(b)(1) because the rule pertains only to facts that tend to prove or disprove the defendant's guilt or innocence, and *Heggs* is not such a fact. Further, the *Regan* court found that *Heggs* should not be applied retroactively under Rule 3.850 because doing so would run contrary to *Witt v. State*, 387 So. 2d 922 (Fla. 1980). Under *Witt*, a change in decisional law is applied retroactively under Rule 3.850 to affect a final judgment only if it is first determined that the change in law is constitutionally and fundamentally significant enough to require retroactive application, and the *Regan* court did not find the holding in *Heggs* to be so "fundamentally significant." *Regan*, 787 So. 2d at 268. Here, affirming that to fall under Rule 3.850(b)(1) a newly discovered fact must tend to prove or disprove guilt or innocence, and unwilling to recede from *Witt*, the Court affirmed the Fifth District's ruling that Coppola's 3.850 motion was untimely. *Coppola*, 938 So. 2d at 512.

The Court also affirmed the Fifth District's conclusion that in any case Coppola was not entitled to relief under *Heggs* because his plea was for a specific term of years, not a guidelines sentence. In doing so, the Court distinguished Coppola's case from *Latiif v. State*, 787 So. 2d 834 (Fla. 2000). In *Latiif*, the Court found that the defendant was entitled to relief under *Heggs* even though his sentence was imposed pursuant to a negotiated plea agreement. However, in *Latiif* the defendant was charged with a first-degree felony and agreed to plead to a lesser included second-degree felony on the express condition that his sentence accord with the 1995 guidelines. Coppola, on the other hand, was charged with a first-degree murder, to which the sentencing guidelines are inapplicable, and the evidence showed that his plea to second-degree murder was conditioned upon a specific term of years and was without reference to the 1995 guidelines. Because the 1995 sentencing guidelines were inapplicable to the original charges

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against him, and because his plea was for a specific term of years and without reference to the sentencing guidelines, Coppola was not entitled to relief under *Heggs*.

SIGNIFICANCE

Coppola resolves a conflict among district courts by determining that the *Heggs* decision does not constitute a newly discovered fact under Rule 3.850(b)(1) and that the decision does not require retroactive application under Rule 3.850. Thus, a defendant convicted prior to the *Heggs* decision cannot use *Heggs* as a ground for obtaining post-conviction relief.

RESEARCH REFERENCE

- 15 Fla. Jur. 2d *Criminal Law* § 2108 (Westlaw database updated Feb. 2007).

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