

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

YOVANY BATIZ,

Appellant,

v.

Case No. 5D18-1831

STATE OF FLORIDA,

Appellee.

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Opinion filed October 25, 2019

Appeal from the Circuit Court  
for Brevard County,  
Morgan Laur Reinman, Judge.

James S. Purdy, Public Defender, and  
Susan A. Fagan, Assistant Public Defender,  
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Andrea K. Totten,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

COHEN, J.

Yovany Batiz, a Honduran citizen, was convicted by a jury of lewd or lascivious molestation of a person less than sixteen years of age.<sup>1</sup> On appeal, Batiz raises a number of issues. We affirm and write only to address Batiz's arguments related to state special maritime criminal jurisdiction pursuant to section 910.006, Florida Statutes (2018).

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<sup>1</sup> The jury acquitted Batiz of lewd or lascivious battery of a person twelve years of age or older but less than sixteen years of age.

Batiz was a cabin steward on a cruise ship. The alleged incident leading to the charges against Batiz occurred while the cruise ship was in international waters.<sup>2</sup> However, the State alleged in the information that the events occurred in Brevard County, Florida. At Batiz's trial, following the State's case-in-chief, Batiz moved for judgment of acquittal, asserting for the first time that the State failed to invoke the maritime criminal jurisdiction of the trial court because the information alleged that the events occurred in Brevard County, which was indisputably incorrect.<sup>3</sup> He alternatively argued that the State failed to prove jurisdiction pursuant to section 910.006. The trial court denied Batiz's motion.

On appeal, Batiz maintains that the information did not invoke the maritime criminal jurisdiction of the trial court because the State failed to allege, pursuant to section 910.006, a maritime occurrence in the charging document.<sup>4</sup> He also maintains that the State's evidence was insufficient to prove that the trial court had jurisdiction pursuant to that statute.

In enacting section 910.006, the Florida Legislature found that "Florida is a major center for international travel and trade by sea" and "has an interest in ensuring the protection of persons traveling to or from Florida by sea." § 910.006(1)(a)–(b), Fla. Stat.

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<sup>2</sup> Neither party disputes this fact.

<sup>3</sup> Although a court's lack of subject matter jurisdiction can be raised at any time, see Wardell v. State, 944 So. 2d 1089, 1091 (Fla. 5th DCA 2006), it is apparent that Batiz was aware of the inaccuracy prior to trial, as he presented an extensive and well-prepared motion for judgment of acquittal, focusing extensively on the claimed jurisdictional deficiencies. His contention that he was prejudiced by the State's allegations in the information rings hollow.

<sup>4</sup> While the State's answer brief analyzes the issue as one of venue, we believe the issue is one of jurisdiction, as it involved the trial court's authority to hear the case.

The statute establishes maritime criminal jurisdiction in Florida courts to hear charges based on acts or omissions on board ships outside the state in delimited circumstances.

Id. § 910.006(1)(e). The circumstances provided are:

(a) There is a suspect on board the ship who is a citizen or resident of this state or a state which consents to the jurisdiction of this state.

(b) The master of the ship or an official of the flag state commits a suspect on board the ship to the custody of a law enforcement officer acting under the authority of this state.

(c) The state in whose territory the act or omission occurred requests the exercise of jurisdiction by this state.

(d) The act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and plan to finally disembark in this state, without regard to intermediate stopovers.

(e) The victim is a Florida law enforcement officer on board the ship in connection with his or her official duties.

(f) The act or omission is one of violence, detention, or depredation generally recognized as criminal, and the victim is a resident of this state.

(g) The act or omission causes or constitutes an attempt or conspiracy to cause a substantial effect in this state that is an element of the offense charged.

(h) The act or omission is one with respect to which all states may exercise criminal jurisdiction under international law or treaty.

Id. § 910.006(3)(a)–(h).

The cases Batiz cites supporting his main assertion—that the State must allege the “essential elements” of maritime criminal jurisdiction or else violate fundamental due process—relate to the requirement that a charging document allege the elements of the

charged crime, not the essential elements of jurisdiction.<sup>5</sup> Batiz also asserts that “[t]he charge in the indictment determines the jurisdiction.” Winburn v. State, 9 So. 694, 695 (Fla. 1891) (citing McLean v. State, 2 So. 5 (Fla. 1887)). While this is a correct statement of law, the cases Batiz relies on involve allegations that a charge was addressed in the improper court, such as a misdemeanor tried before a circuit court lacking jurisdiction over misdemeanor charges.<sup>6</sup> Those cases are inapplicable because Batiz does not contend that the circuit court lacked jurisdiction to try the lewd or lascivious molestation charge.

Taken to its logical conclusion, Batiz’s argument would require the State, in all cases, to allege the jurisdiction of the court. Consequently, all felony charges would necessitate an allegation within the charging document that the circuit court had jurisdiction pursuant to section 26.012(2)(d), Florida Statutes, and article V, section 20(c)(3) of the Florida Constitution. However, neither section 910.006 nor Florida Rule of

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<sup>5</sup> See State v. Gray, 435 So. 2d 816, 818 (Fla. 1983) (“[I]f . . . the information in this case in fact wholly failed to contain allegations of two essential elements of the offense, we would agree with the district court that the question could be initially raised by motion in arrest of judgment.”); Castillo v. State, 929 So. 2d 1180, 1181 (Fla. 4th DCA 2006) (“It is a basic tenet of constitutional law that due process is violated when an individual is convicted of a crime not charged in the charging instrument.” (citations omitted)).

<sup>6</sup> See State v. Vazquez, 450 So. 2d 203, 204 (Fla. 1984) (“On appeal Vazquez claimed that the circuit court had no jurisdiction to try him on a misdemeanor charge.”); Winburn v. State, 9 So. 694, 695 (Fla. 1891) (rejecting plaintiff’s argument that “the court had no jurisdiction to proceed further in the case when the jury returned a verdict of guilty against defendant for assault and battery” on assault with intent to murder charge, because assault and battery was within jurisdiction of justice of peace); Brehm v. State, 427 So. 2d 825, 826 (Fla. 3d DCA 1983) (“The information charging the defendant with the violation of Section 877.08 failed to allege that the defendant had a prior conviction for the same offense. Consequently, the defendant could only have been guilty of a misdemeanor, over which the circuit court does not have jurisdiction.”).

Criminal Procedure 3.140(d)(3)<sup>7</sup> mandates that the charging document allege the statute or constitutional provision serving as the basis for jurisdiction in the trial court. The State is required to allege the essential elements of the crime charged, not the essential elements of jurisdiction. We find that no requirement existed for the State to allege maritime criminal jurisdiction pursuant to section 910.006 within the body of the information in order to invoke the trial court's jurisdiction.<sup>8</sup> The Brevard County circuit court had subject matter jurisdiction to hear felony charges based on acts or omissions on board a ship outside the state, so long as the facts of the case fell under the penumbra of section 910.006. Accordingly, we reject Batiz's argument that the State was required to invoke the trial court's maritime criminal jurisdiction within the charging document.<sup>9</sup>

Alternatively, Batiz maintains that the State's proof failed to establish that the trial court had jurisdiction pursuant to section 910.006. We agree with Batiz that the State

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<sup>7</sup> "*Time and Place*. Each count of an indictment or information on which the defendant is to be tried shall contain allegations stating as definitely as possible the time and place of the commission of the offense charged in the act or transaction or on two or more acts or transactions connected together, provided the court in which the indictment or information is filed has jurisdiction to try all of the offenses charged." Fla. R. Crim. P. 3.140(d)(3).

<sup>8</sup> Even if the State was required to include such an allegation, the failure to do so did not deprive the trial court of subject matter jurisdiction to hear the case. See Fla. Power & Light Co. v. Canal Auth., 423 So. 2d 421 (Fla. 5th DCA 1982).

<sup>9</sup> Although not required, a better practice when filing charges based on events occurring at sea during cruise ship voyages would be to allege the statutory basis for jurisdiction in the charging document. It is unknown why the State alleged that Batiz committed the charged crimes in Brevard County, when that clearly was not the case. This is particularly concerning given that in the 2017/2018 fiscal year, more than one quarter of Florida's 16.8 million cruise passengers embarked from Port Canaveral. Florida Seaport Transportation and Economic Development Council, 2019–2023 Five-Year Florida Seaport Mission Plan, 38 (May 2019), [http://scdn.flaports.org/wp-content/uploads/2019-2023-FLPorts\\_Ports\\_SMP-web.pdf](http://scdn.flaports.org/wp-content/uploads/2019-2023-FLPorts_Ports_SMP-web.pdf).

must prove the court's jurisdiction over the defendant. Deaton v. Dugger, 635 So. 2d 4, 7 (Fla. 1993). "[T]erritorial jurisdiction must be proved beyond a reasonable doubt rather than by a preponderance of the evidence." Id. at 6. "Upon the request of the defendant, the court should instruct the jury on jurisdiction when the evidence is in conflict on the issue."<sup>10</sup> Id. at 7. Thus, we must analyze the proof adduced at trial to determine whether the State met that burden.

The State contends that it proved that the trial court had jurisdiction pursuant to the effects doctrine as well as section 910.006(3)(b), (d), and (f). We address these arguments seriatim.

Initially, we reject the State's argument that the effects doctrine constitutes an independent basis for jurisdiction. That common law doctrine provides that "[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should succeed in getting him within its power." Strassheim v. Daily, 221 U.S. 280, 285 (1911) (citations omitted). In its answer brief, the State relies on State v. Stepansky, 761 So. 2d 1027 (Fla. 2000), and contends that the trial court may exercise criminal jurisdiction over acts committed at sea, outside of its jurisdiction, when the acts have an intrastate effect.

Stepansky was charged in Brevard County with attempted sexual battery of a child and burglary based on events allegedly occurring on a cruise ship in international waters. Id. at 1029. As in the instant case, the cruise ship departed from and returned to Port Canaveral, located in Brevard County. Id. Stepansky challenged Florida's constitutional

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<sup>10</sup> Batiz made no such request in the instant case.

authority to exercise jurisdiction over him pursuant to section 910.006. Id. at 1030. The Florida Supreme Court concluded that the maritime criminal jurisdiction statute did not conflict with federal law because “the structure of section 910.006 ensures that it will not violate the constitution, that it will not conflict with the exercise of jurisdiction by federal courts, and that it will not interfere with the uniform working of the maritime legal system.” Id. at 1034 (citing Pac. Merch. Shipping Ass’n v. Aubry, 918 F.2d 1409, 1422 (9th Cir. 1990)). It also ruled that section 910.006 was a reasonable application of the effects doctrine. Id. at 1036–37. The supreme court did not express a broad, undefined basis for the exercise of jurisdiction over maritime criminal occurrences pursuant to the effects doctrine. The statute is clear that maritime criminal jurisdiction exists in the delimited circumstances of section 910.006(3)(a)–(h). Accordingly, we reject the State’s argument that the trial court had jurisdiction to hear Batiz’s case pursuant to the effects doctrine.

Next, section 910.006(3)(b) provides jurisdiction if “[t]he master of the ship or an official of the flag state commits a suspect on board the ship to the custody of a law enforcement officer acting under the authority of this state.” The State presented no evidence related to the identities of officials of the ship’s flag state or the master of the ship, much less whether any of those officials committed Batiz to the custody of a Florida law enforcement officer. We recognize that following the alleged incident, state law enforcement officers boarded the ship, conducted an investigation, and ultimately took Batiz into custody. However, while this might constitute circumstantial evidence of jurisdiction pursuant to section 910.006(3)(b), without more, such evidence was insufficient to prove jurisdiction beyond a reasonable doubt.

Third, section 910.006(3)(d) provides jurisdiction if “[t]he act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and plan to finally disembark in this state, without regard to intermediate stopovers.” The State’s evidence related to this subsection consisted of testimony from the victim’s father that the cruise originated and terminated at Port Canaveral and that he saw hundreds of people at the cruise ship terminal. It presented no testimony or evidence related to the ship’s revenue passengers. While we might be correct in speculating that over half of the revenue passengers embarked and disembarked at Port Canaveral, speculation is all it is. We find that the State’s evidence was insufficient to prove jurisdiction pursuant to section 910.006(3)(d) beyond a reasonable doubt.

Finally, section 910.006(3)(f) provides jurisdiction if “[t]he act or omission is one of violence, detention, or depredation generally recognized as criminal, and the victim is a resident of this state.” The State presented testimony that Batiz violently committed the alleged crime; the allegations included that Batiz cornered the victim in a shower and inserted an object into the victim’s anus. Section 910.006(3)(f) relates to the nature of the act rather than the offense charged.<sup>11</sup> Additionally, the State presented testimony that the victim was a Florida resident. We thus conclude that the State proved jurisdiction pursuant

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<sup>11</sup> Regardless, we would reach the same result had our analysis focused on whether the offense—lewd and lascivious molestation—constitutes a violent crime. Pursuant to section 775.084(1)(d)1.e., Florida Statutes (2015), a person convicted as an adult three or more times of lewd or lascivious molestation is considered a “violent career criminal.” Relatedly, in Coker v. Georgia, 433 U.S. 584, 597 (1977), the United States Supreme Court concluded that rape “is also a violent crime because it normally involves force, or the threat of force or intimidation, to overcome the will and the capacity of the victim to resist.”



to section 910.006(3)(f) beyond a reasonable doubt because Batiz's act was one of violence generally recognized as criminal and the victim was a Florida resident.

Accordingly, we affirm the trial court's denial of Batiz's motion for judgment of acquittal. The trial court had jurisdiction to hear Batiz's case despite the State's failure to allege a maritime occurrence or jurisdiction pursuant to section 910.006 in the information. Additionally, the State proved jurisdiction pursuant to section 910.006(3)(f) beyond a reasonable doubt.

AFFIRMED.

JACOBUS, B.W., Senior Judge, concurs.  
GROSSHANS, J., concurs with opinion.

GROSSHANS, J., concurring.

I agree with the majority's opinion and the holding in this case. However, I do not find it necessary to reach the issues discussed in footnote 9, and therefore do not join that portion of the opinion.