FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3426

DANIEL WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Gadsden County.
Barbara K. Hobbs, Judge.

December 3, 2019

OSTERHAUS, J.

Daniel Williams appeals his conviction and life sentence for robbing a Dollar General store at gunpoint. He raises two issues on appeal. First, Mr. Williams argues for a new trial on the basis that the trial court erred by instructing the jury with a prior version of the standard jury instruction for eyewitness identification. Second, he seeks a corrected costs order because the trial court failed to cite any statutory authority in imposing a $3.00 teen court cost. We affirm his judgment and sentence, except as to the costs.

I.

On July 20, 2016, a man robbed a Dollar General store in Gretna at gunpoint and fled. Two Dollar General employees

working at the time thought they recognized the robber as the boyfriend of an off-duty co-worker who frequently came to the store. Mr. Williams fled when law enforcement approached him later that day, but he was caught. That night, law enforcement put together a six-person photo lineup for the two Dollar General employees and both employees identified Mr. Williams as the robber.

Almost two years passed before Mr. Williams's case went to trial. During this time, Florida passed a new eyewitness identification statute in 2017 addressing the use of photo lineups by law enforcement. *See* § 92.70, Fla. Stat. Among other things, the new law required law enforcement to conduct photo lineups in a blind manner to avoid officers from inadvertently communicating cues about specific photos to witnesses. *See id.* Where law enforcement failed to comply with the law's new procedures, the statute provided for courts and juries to take adverse inferences as to the reliability of eyewitness identification evidence. *See id.* The new law led to the revision of the standard jury instruction applicable to eyewitness identification in March 2018. *See In re: Standard Jury Instructions in Criminal Cases—Report 2017-09*, 238 So. 3d 192 (Fla. 2018). The new instruction tracked the requirements of the new law.

Which brings us back to Mr. Williams's trial in May 2018. At the charge conference, the State and the defense could not agree on which version of the eyewitness identification standard jury instruction should be used, whether the old version or the new one. The trial judge decided to go with the prior instruction applicable when the offense and photo lineup took place because the new instruction addressed different legal standards that didn't yet exist when the lineup occurred. Mr. Williams was subsequently convicted and sentenced. He now appeals the jury instruction issue seeking a new trial. He also appeals an unrelated costs issue.

II.

We review trial court decisions to give or withhold requested jury instructions for abuse of discretion. *James v. State*, 695 So. 2d 1229, 1236 (Fla. 1997) ("[A] trial court has wide discretion in instructing the jury, and the court's decision regarding the charge to the jury is reviewed with a presumption of correctness on

appeal."). "[A] trial judge in a criminal case is not constrained to give only those instructions that are contained in the Florida Standard Jury Instructions." *Id.*

Mr. Williams argues the trial court erred by denying his request to give the most current standard jury instruction related to eyewitness identification instead of the 2016 version of the instruction. Mr. Williams denied being the gunman at the store and argued that use of the old instruction kept the jury from considering whether law enforcement had complied with the procedures contained in the new instruction. However, we see no merit in this argument because the current standard jury instruction tracks legal requirements for eyewitness identification that only became effective in 2017, which was after the robbery and photo lineup occurred in this case. Again, law enforcement arrested Mr. Williams for the robbery and completed the photo lineup in his case in 2016. At that time § 92.70 did not exist. And Florida law did not prescribe the same photo lineup procedures and remedies that § 92.70 does now. Because the photo lineup performed in Mr. Williams's case occurred before the current statute and instruction existed, the trial court did not abuse its discretion by using the prior version of the standard jury instruction instead of the current § 92.70-derived instruction. *Cf. Smiley v. State*, 966 So. 2d 330 (Fla. 2007) (holding that a defendant was not entitled to a jury instruction based on a statute enacted after the date of the offense); *Carinda v. State*, 734 So. 2d 514 (Fla. 4th DCA 1999) (reversing where the trial court gave a new standard jury instruction which post-dated the date of the offense); *Hicks v. State*, 277 So. 3d 153, 172 (Fla. 1st DCA 2019) (Winokur, J., concurring) (distinguishing cases in which a Stand-Your-Ground immunity decision was made *before* a law changed the burden of proof, from cases in which the immunity hearing occurred *after* the law changed the burden of proof).

Finally, we accept the State's concession and reverse the $3.00 teen court cost assessed by the trial court. "[I]t is improper to impose additional court costs without reference to statutory authority, or an explanation in the record as to what the additional costs represent." *Bradshaw v. State*, 638 So. 2d 1024, 1025 (Fla. 1st DCA 1994). Thus, we remand for the trial court to correct the costs imposed on Mr. Williams.

III.

AFFIRMED in part, REVERSED in part, and REMANDED for the correction of costs.

WOLF and B.L. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and David A. Henson, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.