Third District Court of Appeal

State of Florida, January Term, A.D. 2012

Opinion filed February 22, 2012.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-2901
Lower Tribunal No. 05-31805

Charles Manetta,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Migna Sanchez-Llorens, Judge.

Carlos J. Martinez, Public Defender, and Manuel Alvarez, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Michael W. Mervine, Assistant Attorney General, for appellee.

Before WELLS, C.J., FERNANDEZ, J. and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

The defendant appeals convictions and sentences for two counts of lewd and lascivious molestation of a child twelve to sixteen years of age under Section 800.4(5)(c)(2), Florida Statutes, (Counts I and II) , and one count of lewd and lascivious molestation of a child less than twelve years old (Count IV). The victim alleged in Counts I and II was a thirteen-year-old friend of his daughter who was a guest in the defendant's home; the one in Count IV was the daughter, who was eight years old.[1]

I.

The first issue presented claims the right to a mistrial, continuance, and a new trial on all counts because, after the State's case, in which the defendant's daughter had been the primary witness against him, it was first revealed by the prosecution that she had made unresolved similar accusations against three other persons. We reject this argument both because (1) inasmuch as appellant failed to secure a specific ruling on the issue, the point was not properly preserved, see LeRetilley v. Harris, 354 So.2d 1213 (Fla. 4th DCA 1978), and (2) more importantly, under Pantoja v. State, 59 So. 3d 1092, 1100 (Fla. 2011), in which the supreme court held that in the absence of an adverse adjudication on these claims,

[1] Mr. Manetta was found not guilty as to Count III, which concerned another eleven-year-old girl.

which did not occur here, mere accusations of similar abuse against others by a State witness were inadmissible, the argument was unavailing on its merits.

II.

We do agree with Manetta that double jeopardy bars the entry of two judgments and sentences on Counts I and II. This is because Counts I and II were identical in every respect[2]; and thus did not so much as allege separate acts which might form the basis of separate judgments even if it were permitted under the law. See Partch v. State, 43 So. 3d 758, 761-62 (Fla. 1st DCA 2010) (applying double jeopardy where "neither the charging information nor the jury verdict form included language clearly predicating the dispute charges on two distinct acts. The ambiguous wording of the charging information and the jury verdict makes it impossible for this court to know if the jury convicted the appellant for one act of sexual battery or two distinct acts"). There can be no question that two convictions for the same crime constitute a violation of the constitutional guarantee against

[2] Both Count I and Count II state: "Charles A. Manetta, on or about September 09, 2005, in the County and State aforesaid, being a person of the age of (18) years or older, did unlawfully and intentionally touch the breasts, genitals, genital area, or buttocks, or the clothing covering the breasts, genitals, genital area, or buttocks, of D.M.(a minor), a person 12 years of age or older, but less than 16 years of age, in violation of s. 800.04(5)(c)2, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida."

double jeopardy in its starkest form. See Lippman v. State, 633 So. 2d 1061 (Fla. 1994).[3]

Accordingly, the judgments and sentences as to Counts I and IV are affirmed; the judgment and sentence as to Count II are vacated.

Affirmed in part; vacated in part.

[3] We do not reach the issue debated by the parties as to the applicability of State v. Meshell, 2 So. 3d 132 (Fla. 2009), which permits multiple charges alleging separate, but closely related acts of sexual abuse under section 800.4(1)(a), Florida Statute, to the present prosecutions under section 800.4(5)(c). But cf. Brown v. State, 25 So. 3d 78 (Fla. 2d DCA 2009); J.M. v. State, 4 So. 3d 703 (Fla. 5th DCA 2009); Cabanela v. State, 871 So. 2d 279 (Fla. 3d DCA 2004).