

SUPREME COURT OF FLORIDA

Tedder v. State

12 So. 3d 197 (Fla. 2009) · No. SC08-1055 · Decided June 4, 2009

SUMMARY

The Supreme Court of Florida declined to accept jurisdiction over Tedder v. State because the portion of the Second District Court of Appeal's decision addressing retention of a driver's license during interrogation did not receive a majority vote. The court held that the analysis therefore was not a decision of the district court for purposes of conflict jurisdiction and did not constitute Florida appellate precedent.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Quince, C.J.; Lewis, J.; Polston, J.; Labarga, J.; Perry, J.; Canady, J., recused; Pariente, J., did not participate
JURISDICTION	Florida
DECIDED	June 4, 2009
DOCKET	SC08-1055
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Supreme Court of Florida conducted discretionary jurisdictional review of a Second District Court of Appeal decision and declined to accept jurisdiction.
STANDARD OF REVIEW	The court applied the constitutional and statutory requirements for discretionary conflict jurisdiction, asking whether the district court decision was a majority-endorsed decision that expressly and directly conflicted with controlling precedent.
PRECEDENTIAL VALUE	Published Florida Supreme Court decision binding on its jurisdictional rule and on the precedential effect of non-majority appellate analyses; the special concurrence is not independently controlling.
PARTIES	Gaynor Earl Tedder, Jr. v. State of Florida

TOPICS

- appellate jurisdiction
- appellate procedure
- criminal procedure
- suppression of evidence

PRACTICE AREAS

appellate procedure

criminal procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida had discretionary conflict jurisdiction to review a portion of a district court decision whose analysis on the purported conflict issue was endorsed by only one judge.
2. Whether a district court's non-majority or non-plurality analysis constitutes Florida appellate precedent capable of supporting conflict jurisdiction.

HOLDINGS

1. The Supreme Court of Florida lacked jurisdiction to review the license-retention portion of the Second District's decision because that analysis did not garner a majority vote and therefore was not a decision of a district court of appeal within the meaning of article V, section 3(b)(3) of the Florida Constitution.
2. The license-retention analysis did not constitute Florida appellate precedent because it was endorsed by neither a majority nor a plurality of the district court.

KEY QUOTATIONS

"We have determined that we should decline to accept jurisdiction because the portion of Tedder v. State, 33 Fla. L. Weekly D704, ___ So.3d ___, 2008 WL 612313 (Fla. 2d DCA Mar.7, 2008), that addressed the purported conflict issue (i.e., police retention of an individual's driver's license followed by interrogation) did not garner a majority vote and, hence, was not a "decision of a district court of appeal" within the meaning of article V, section 3(b)(3)." (12 So. 3d at 197)

"The license-retention analysis provided below did not garner a majority or plurality vote; therefore, Florida appellate courts must presume that the trial court order was affirmed on the basis of the trial court's reasoning, which is not appellate precedent in the Second District or any other district court of appeal." (12 So. 3d at 198)

FACTUAL BACKGROUND

The underlying case involved police retention of Tedder's driver's license followed by interrogation and a motion to suppress statements. The Second District affirmed the denial of suppression, but only one judge supported the analysis concerning whether the license retention constituted a seizure or otherwise affected the interrogation. Two judges agreed on the result without providing a shared analysis.

PROCEDURAL HISTORY

The Second District affirmed the denial of Tedder's motion to suppress statements, but its license-retention analysis did not receive a majority vote. The Supreme Court determined that the relevant portion was not a decision of a district court of appeal for purposes of discretionary conflict jurisdiction and denied review.

DISPOSITION

CASES CITED

- Kennedy v. Kennedy, 641 So. 2d 408, 409 (Fla. 1994)
- Burns v. State, 676 So. 2d 1366, 1366 (Fla. 1996)
- Seaboard Air Line Railroad v. Branham, 104 So. 2d 356, 358 (Fla. 1958)
- Dale v. Jennings, 90 Fla. 234, 107 So. 175, 181 (1926)
- State v. McClung, 47 Fla. 224, 37 So. 51, 52 (1904)
- Brye v. State, 927 So. 2d 78 (Fla. 1st DCA 2006)
- Barna v. State, 636 So. 2d 571 (Fla. 4th DCA 1994)
- Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992)
- Golphin v. State, 945 So. 2d 1174, 1185 (Fla. 2006)
- United States v. Johnson, 326 F.3d 1018, 1022 (8th Cir. 2003)

OPINION

LEWIS, J.

12 So.3d 197 (2009) Gaynor Earl TEDDER, Jr., Petitioner(s) v. STATE of Florida, Respondent(s). No. SC08-1055. Supreme Court of Florida. June 4, 2009. This cause was previously submitted to the Court for jurisdictional review pursuant to article V, section 3(b)(3) of the Florida Constitution.

We have determined that we should decline to accept jurisdiction because the portion of Tedder v. State, 33 Fla. L. Weekly D704, ___ So.3d ___, 2008 WL 612313 (Fla. 2d DCA Mar.7, 2008), that addressed the purported conflict issue (i.e., police retention of an individual's driver's license followed by interrogation) did not garner a majority vote and, hence, was not a "decision of a district court of appeal" within the meaning of article V, section 3(b)(3).

See, e.g., Kennedy v. Kennedy, 641 So.2d 408, 409 (Fla.1994). No motion for rehearing will be entertained by the Court. See Fla. R.App. P. 9.330(d)(2). It is so ordered. QUINCE, C.J., and LEWIS, POLSTON, LABARGA, and PERRY, JJ., concur. LEWIS, J., specially concurs with an opinion. CANADY, J., recused. PARIENTE, J., did not participate. LEWIS, J., specially concurring.

I fully agree with my colleagues that we lack jurisdiction to review Tedder v. State, 33 Fla. L. Weekly D704, ___ So.3d ___, 2008 WL 612313 (Fla. 2d DCA Mar.7, 2008), with regard to the license-retention issue. Our prior precedent in Burns v. State, 676 So.2d 1366, 1366 (Fla.1996), Kennedy v. Kennedy, 641 So.2d 408, 409 (Fla.1994), and Seaboard Air Line Railroad v. Branham, 104 So.2d 356, 358 (Fla.

1958) (addressing analogous provision of the 1885 Florida Constitution as amended in 1956), mandates this conclusion. In those decisions, we explained that our discretionary conflict jurisdiction under article V, sections 3(b)(3) and 3(b)(4) of the Florida Constitution[1] requires that the "decision" under review provide a judgment and decision endorsed by a majority of the district court of appeal.

I write separately to more fully explain why the decision below does not meet this standard and, further, does not constitute Florida precedent. In *Tedder*, the Second District did not provide a majority analysis with regard to the license-retention issue. See 33 Fla. L. Weekly at D705-06, ___ So.3d at ___. Consequently, the relevant reasoning which was endorsed by a single judge may not supply conflict jurisdiction and, furthermore, is not Florida precedent.

See, e.g., *Kennedy*, 641 So.2d at 409 (explaining that "this Court must look to [the] `opinion' upon which the district court's `decision' is based to determine [the] probable existence of direct conflict," and holding *198 that "because the [supplied analysis] exists only in [an] isolated plurality opinion, the [asserted] doctrine should not be considered the law of this state" (emphasis supplied)).

The license-retention analysis provided below did not garner a majority or plurality vote;[2] therefore, Florida appellate courts must presume that the trial court order was affirmed on the basis of the trial court's reasoning, which is not appellate precedent in the Second District or any other district court of appeal. See, e.g., *Dale v. Jennings*, 90 Fla. 234, 107 So.

175, 181 (1926) (holding that a judgment issued by an equally divided court resolves the case on the grounds supplied by the lower court and does not establish precedent); *State v. McClung*, 47 Fla. 224, 37 So. 51, 52 (1904) (same).

Here, the pertinent portion of the district court's "decision" (i.e., what two panel judges agreed upon)[3] affirmed the denial of *Tedder*'s motion to suppress statements without providing any shared analysis. In contrast, the First and Fourth District Courts of Appeal have provided persuasive majority decisions addressing substantially similar factual scenarios.

See *Brye v. State*, 927 So.2d 78 (Fla. 1st DCA 2006); *Barna v. State*, 636 So.2d 571 (Fla. 4th DCA 1994). Since we have not definitively addressed this type of totality-of-circumstances license-retention situation when coupled with a search or interrogation,[4] the district-court decisions in *Brye* and *Barna* remain binding precedent throughout this state. See, e.g., *Pardo v. State*, 596 So.2d 665, 666 (Fla.1992) (holding that in the absence of inter-district conflict or contrary precedent from this Court, the decision of a district court of appeal is binding precedent throughout Florida).

For these reasons, I specially concur in the order denying review of *Tedder v. State*, 33 Fla. L. Weekly D704, ___ So.3d ___, 2008 WL 612313 (Fla. 2d DCA Mar.7, 2008). NOTES [1] In relevant part, section 3(b)(3) provides: The supreme court [of Florida]... [m]ay review any

decision of a district court of appeal that... expressly and directly conflicts with a decision of another district court of appeal or of the supreme court [of Florida] on the same question of law.

(Emphasis supplied.) Inter alia, section 3(b)(4) provides a mechanism for the district courts of appeal to certify direct conflict with the decision of another district court: The supreme court [of Florida]... [m]ay review any decision of a district court of appeal that passes upon a question certified by it... to be in direct conflict with a decision of another district court of appeal.

(Emphasis supplied.) [2] See Black's Law Dictionary 1125, 1193 (8th ed.2004) ("plurality opinion. An opinion lacking enough judges' votes to constitute a majority, but receiving more votes than any other opinion." "plurality.

The greatest number (esp. of votes), regardless of whether it is a simple or an absolute majority."). Only one out of three district court judges supported the legal analysis regarding the license-retention issue. See Tedder, 33 Fla. L. Weekly at D706, ___ So.3d at ___ (Whatley, J., concurring in part and in result); id. at D706-07, at ___ (Stringer, J., concurring in part and dissenting in part).

[3] See art. V, § 4(a), Fla. Const. ("Each district court of appeal shall consist of at least three judges. Three judges shall consider each case and the concurrence of two shall be necessary to a decision."). [4] See Golphin v. State, 945 So.2d 1174, 1185 (Fla.2006) ("[T]he retention of identification during the course of further interrogation or search certainly factors into whether a seizure has occurred." (emphasis supplied)); cf. United States v. Johnson, 326 F.3d 1018, 1022 (8th Cir.2003) ("A reasonable person would not believe that he was free to leave a scene where three uniformed officers drew him away from their party, stood closely at either side of him, and took possession of his personal propertyhere, his driver's license while conducting a brief interrogation.").