

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Slack v. State

30 So. 3d 684 (Fla. 1st DCA 2010) · No. No. 1D07-6305 · Decided March 25, 2010

SUMMARY

The Florida First District Court of Appeal held that the State failed to prove an essential element of fleeing or attempting to elude under section 316.1935(2), Florida Statutes, because it presented no evidence that the patrol vehicle prominently displayed agency insignia and jurisdictional markings. The court reversed the conviction and remanded for entry of judgment on the lesser-included offense under section 316.1935(1).

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Benton, J.; Kahn, J.; Clark, J.
JURISDICTION	Florida
DECIDED	March 25, 2010
DOCKET	No. 1D07-6305
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed his conviction for fleeing or attempting to elude a law enforcement officer under section 316.1935(2), Florida Statutes (2006), after the trial court denied his motion for judgment of acquittal.
STANDARD OF REVIEW	The denial of a motion for judgment of acquittal is reviewed under the competent, substantial evidence standard, viewing the evidence and reasonable inferences in the light most favorable to the State; the legal issue presented by the ruling is reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Sidney Marcellus Slack v. State of Florida

TOPICS

- criminal procedure
- suppression of evidence
- appellate procedure
- standard of review
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish the agency-insignia and jurisdictional-markings element of fleeing or attempting to elude under section 316.1935(2), Florida Statutes (2006).
2. Whether section 316.1935(1) is a necessarily lesser-included offense of section 316.1935(2), and whether the appellate court could direct entry of judgment on that offense under section 924.34, Florida Statutes (2009), when the jury necessarily found all of its elements.

HOLDINGS

1. Testimony that the deputy was driving a marked patrol car with lights on top, without evidence that the vehicle prominently displayed agency insignia and other jurisdictional markings, was insufficient to establish the charged offense. The trial court therefore erred in denying the motion for judgment of acquittal.
2. Section 316.1935(1) is a necessarily lesser-included offense of section 316.1935(2), notwithstanding that both offenses are third-degree felonies carrying the same penalty. Because the jury was instructed on all elements of subsection (1) and necessarily found those elements when it convicted under subsection (2), the appellate court could direct entry of judgment for subsection (1) under section 924.34.

KEY QUOTATIONS

“By neglecting to adduce any evidence that Deputy Stone’s vehicle had agency insignia or other jurisdictional markings, the state failed to make out a prima facie case of fleeing or attempting to elude a law enforcement officer in violation of section 316.1935(2), and the trial court erred in denying Mr. Slack’s motion for judgment of acquittal.” (30 So. 3d at 686)

“‘Necessarily lesser included offenses are those offenses in which the statutory elements of the lesser included offense are always subsumed within those of the charged offense.’” (30 So. 3d at 687)

FACTUAL BACKGROUND

A deputy observed an oncoming Mercury vehicle with inoperative taillights, turned around, and initiated a traffic stop. He testified that he was driving a marked patrol car with lights on top, wearing a uniform, and that he activated the vehicle’s exterior lights and siren. The State presented no evidence that the patrol vehicle prominently displayed agency insignia or other jurisdictional markings.

PROCEDURAL HISTORY

Slack was convicted by a jury under section 316.1935(2). The trial court denied his motion for judgment of acquittal, which argued that the State failed to prove the patrol vehicle displayed agency insignia and other jurisdictional markings. On appeal, the First District withdrew its prior opinion in response to the State’s motion for rehearing and substituted this opinion, reversing the conviction and remanding for entry of judgment on the lesser-included offense under section 316.1935(1).

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment and direct the trial court to enter a judgment of conviction for the lesser-included offense of fleeing or attempting to elude a law enforcement officer in violation of section 316.1935(1), Florida Statutes (2006).

CASES CITED

- Gorsuch v. State, 797 So. 2d 649 (Fla. 3d DCA 2001)
- State v. Konegen, 18 So. 3d 697, 699 (Fla. 4th DCA 2009)
- Jones v. State, 790 So. 2d 1194, 1197 (Fla. 1st DCA 2001) (en banc)
- Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002)
- Tibbs v. State, 397 So. 2d 1120 (Fla. 1981)
- Sanders v. State, 944 So. 2d 203, 207 (Fla. 2006)
- Ray v. State, 403 So. 2d 956 (Fla. 1981)
- Carle v. State, 983 So. 2d 693, 695 (Fla. 1st DCA 2008)
- State v. Paul, 934 So. 2d 1167, 1176 (Fla. 2006)
- State v. Sigler, 967 So. 2d 835, 844 (Fla. 2007)
- Michelson v. State, 927 So. 2d 890, 892-93 (Fla. 4th DCA 2005)