

SUPREME COURT OF FLORIDA

State v. Weaver

957 So. 2d 586 (Fla. 2007) · No. SC06-258 · Decided May 10, 2007

SUMMARY

The Supreme Court of Florida held that a trial court's erroneous instruction on the bodily-harm form of battery did not constitute fundamental error where the defendant was charged only with intentional touching or striking, and the State presented no evidence or argument concerning bodily harm. The court answered the certified question in the negative, quashed the district court's decision, and disapproved Vega and Dixon to the extent inconsistent with its opinion.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Cantero, J.; Lewis, C.J.; Wells, J.; Anstead, J.; Pariente, J.; Quince, J.; Bell, J.
JURISDICTION	Florida
DECIDED	May 10, 2007
DOCKET	SC06-258
DISPOSITION	quashed
PROCEDURAL POSTURE	The State sought review of a Second District Court of Appeal decision reversing Weaver's conviction for battery on a law enforcement officer. The district court certified a question of great public importance concerning whether an erroneous instruction on an uncharged form of battery constituted fundamental error.
STANDARD OF REVIEW	A jury-instruction error not preserved by contemporaneous objection is reviewable only if it constitutes fundamental error. Fundamental error occurs when the error reaches into the validity of the trial so that a guilty verdict could not have been obtained without the alleged error, including when the error concerns an element pertinent or material to what the jury must consider in order to convict.
PRECEDENTIAL VALUE	Published, precedential Florida Supreme Court opinion
PARTIES	State of Florida v. Gregory Carnell Weaver

TOPICS

jury instructions

criminal procedure

preservation of error

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an unobjected-to jury instruction commits fundamental error when it instructs the jury on both bodily-harm battery and intentional-touching battery on a law enforcement officer, although the information charged only intentional touching and the State presented neither evidence nor argument concerning bodily harm.
2. Whether the Second District Court of Appeal's decisions in *Vega v. State* and *Dixon v. State* were inconsistent with the Florida Supreme Court's fundamental-error standard.

HOLDINGS

1. An unobjected-to jury instruction that includes the bodily-harm form of battery does not constitute fundamental error when the information charged only intentional-touching battery and the State neither relied on nor presented evidence concerning bodily harm.
2. *Vega* and *Dixon* are disapproved to the extent they are inconsistent with the rule that the erroneous inclusion of an uncharged alternative form of an offense is not fundamental error when that alternative was not at issue and was unsupported by the State's evidence or argument.

KEY QUOTATIONS

"To justify not imposing the contemporaneous objection rule, 'the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.'" (957 So. 2d at 588)

"Therefore, such an error does not 'reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.'" (957 So. 2d at 589)

FACTUAL BACKGROUND

During a dispute at an apartment complex, law-enforcement officers attempted to remove Weaver and his brother from a crowd. After an officer pushed Weaver away when Weaver refused to comply, Weaver twice shoved the officer in the chest. Weaver was charged only with the intentional-touching form of battery on a law enforcement officer; the State neither alleged nor presented evidence that Weaver caused bodily harm. The trial court nevertheless instructed the jury on both intentional touching and bodily harm battery, and the jury found Weaver guilty.

PROCEDURAL HISTORY

Weaver was charged with battery on a law enforcement officer based only on intentionally touching or striking the officer. Although the State presented no evidence or argument concerning bodily harm, the trial court

instructed the jury on both forms of battery, and the jury convicted Weaver. The Second District reversed, relying on Vega and Dixon, and certified a question to the Supreme Court of Florida. The Supreme Court answered the question in the negative, quashed the district court's decision, disapproved Vega and Dixon to the extent inconsistent with its opinion, and remanded.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The case was remanded to the Second District Court of Appeal for further proceedings consistent with the Supreme Court's opinion.

CASES CITED

- Weaver v. State, 916 So. 2d 895, 896, 898-99 (Fla. 2d DCA 2005)
- Vega v. State, 900 So. 2d 572 (Fla. 2d DCA 2004)
- Dixon v. State, 823 So. 2d 792, 794 (Fla. 2d DCA 2001)
- Reed v. State, 837 So. 2d 366, 369-70 (Fla. 2002)
- State v. Delva, 575 So. 2d 643, 644-45 (Fla. 1991)
- Battle v. State, 911 So. 2d 85, 89 (Fla. 2005)
- Garcia v. State, 901 So. 2d 788, 794 (Fla. 2005)
- Stewart v. State, 420 So. 2d 862, 863 (Fla. 1982)
- Brown v. State, 124 So. 2d 481, 484 (Fla. 1960)

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