

1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
2 OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY

3

4 STATE OF FLORIDA,

5 Plaintiff,

6 vs. Case Number 14-216CFAES

7 CURTIS REEVES,

8 Defendant.

9

10 PROCEEDINGS: Status Conference

11 DATE: May 29, 2018

12 BEFORE: HONORABLE SUSAN BARTHLE
13 Circuit Court Judge
14 Sixth Judicial Circuit
15 Dade City, Florida

16 PLACE: Robert D. Sumner Judicial Center
17 38053 Live Oak Avenue
18 Dade City, FL 33525

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon, everybody.

3 Mr. Escobar's (sic) here, Mr. Martin,

4 Mr. Garcia, Ms. Sumner, everybody here on

5 State of Florida vs. Curtis Reeves.

6 MR. MICHAELS: Judge, just for the record,

7 Dino Michaels on behalf of Mr. Reeves. I'm a little

8 bigger.

9 THE COURT: Did I say Escobar?

10 MR. MICHAELS: You did.

11 THE COURT: I'm sorry.

12 MR. MICHAELS: Little bigger --

13 THE COURT: I know who you are.

14 MR. MICHAELS: -- and better looking.

15 THE COURT: Sorry about that, Mr. Michaels.

16 All right. And pursuant to the recent ruling in
17 the Second DCA, I guess we are ready to set this case
18 for trial.

19 MR. MARTIN: State's ready to set it for trial.

20 We'd like an October trial date of this year.

21 THE COURT: Not going to happen, Mr. Martin.

22 Sorry.

23 MR. MICHAELS: Your Honor, when you said

24 pursuant to the Second DCA's ruling --

25 THE COURT: Well --

1 MR. MICHAELS: -- I imagine the Court's talking
2 about the Second DCA's ruling in terms of our writ.

3 THE COURT: Right, the denial.

4 MR. MICHAELS: However, right before that, the
5 Second DCA came out with *Martin vs. State* wherein
6 they -- Second DCA says that the 2017 amendment to
7 the stand your ground statute, number one, is
8 retroactive. And number two, applies to any cases
9 that were in the pipeline. So this case will
10 certainly fit into that category.

11 Of course, the Third DCA came out -- and I'm
12 sure the Court's familiar with that -- *Love* where
13 they have a different opinion saying it's not
14 retroactive because it's not procedural in nature.

15 And so now we have a situation where the
16 Second DCA has certified the question to the
17 Florida Supreme Court. So we're stuck with the
18 prospect of let's say the Court's going to set a
19 trial date. If we set a trial date, then the Defense
20 would be forced to file a motion for a new hearing
21 because essentially *Martin* not only says does it
22 apply retroactively, but get a new hearing.

23 And *Martin* was interesting because that guy went
24 to trial -- did the hearing, went to trial. And the
25 Second DCA said, you still have to hear it again.

1 And so, you know, we would be in a position now
2 where we would have to now request a hearing, of
3 course, involving not only a monetary and time
4 commitment of this Court -- and, of course, the Court
5 can well recall as everybody does, and I can see by
6 Your Honor's expression, you know, February, 2017
7 doesn't seem that long ago considering everything we
8 had to do to get it there.

9 So my problem with setting a trial date at this
10 point given the uncertainty of that amendment and how
11 it would apply to this case is that, number one, the
12 Court is going to go into -- have to make time. So
13 it's going to be a real significant, on the Court's
14 part, investment and we don't even know if we're
15 going to be able to go to trial at that point.

16 Certainly, in terms of Mr. Reeves and for the
17 Defense, you know, hiring experts and putting on that
18 type of a case is expensive for that -- for the
19 accused. And so now we're going to be put in a
20 situation where now we're going to have to get those
21 experts or other experts and get them in line. And
22 it's a monetary commitment on his part as well.

23 So because of the -- the long and the short of
24 it is because things are so up in the air concerning
25 how this thing's going to shake out, I don't think

1 we're in a position to have a commitment by the Court
2 and a potential commitment by the Defense to be able
3 to set this for a trial. I think we need to wait and
4 see what the Florida Supreme Court says is the answer
5 to that question that the Second DCA has certified.

6 That's our position.

7 THE COURT: Thank you, Mr. Michaels.

8 Mr. Martin?

9 MR. MARTIN: Judge, the State has also reviewed
10 the *Martin* case out of the Second DCA which came out
11 May 4th and the *Love* case that came out on May 11th
12 out of the Third DCA.

13 The Court might also recall -- and I didn't
14 bring that case out -- there's a case out of the
15 Third DCA that indicated that the shifting of the
16 burden was not procedural. So, you know, there's
17 that mix, also.

18 Let me just go through the analysis for the
19 Court. The Second DCA came out first with their
20 ruling. And in that particular case, an individual
21 had their immunity hearing, lost, went on to trial
22 and that's what was in the type at the time when the
23 case went down.

24 The Second DCA sent it back. And what's unique
25 about it is they did not vacate the trial.

1 THE COURT: Correct.

2 MR. MARTIN: They said, go back and have an
3 immunity hearing and we trust the Judge will look at
4 it and see if State meets their burden. And if the
5 State meets the burden, then sentence the person in
6 trial.

7 Now, they didn't talk about harmless error or
8 anything, but they kind of set up a procedural. The
9 Third DCA came out and said, no, it's not
10 retroactive, you can go forth.

11 So here's the scenario. And it's kind of a
12 win/win as far as setting the trial. If you go by
13 the Second DCA logic, you set the trial, you get it
14 over with. And if the Florida Supreme Court comes
15 back and says it's retroactive, the trial's done.
16 And if he's not guilty, well, then it's over. But
17 the trial is done, you have the immunity hearing for
18 whatever you have to do, and then you sentence the
19 person for the -- whatever the conviction is.

20 Under the Third DCA logic, it's not retroactive.
21 You have the trial and it's over with. On either
22 case, the trial is done. And so what we're looking
23 at is whether or not we can go ahead and get that
24 done and what are the ramifications. We have an
25 immunity hearing where, if you follow the Second DCA

1 logic, is that the trial is not -- excuse me, is not
2 vacated and you sentence the person at the
3 conclusion.

4 Let's get it done. This is four years now in
5 the making. So the State would like a trial date.
6 The State is aware of the consequences based on our
7 reading of the case law. We would like it as early
8 as possible. I know I said October. I still stand
9 by that and I know that the Court's calendar, but it
10 is old. And I really want to get it done as soon as
11 possible. So that's the reason --

12 THE COURT: I understand.

13 MR. MARTIN: -- we should set it for trial.

14 MR. MICHAELS: Your Honor, and part of the
15 problem with that is is that the Second DCA's
16 decision has to do with something that's already
17 happened. And basically they're instructing the
18 Court that you don't have to retry this thing, but
19 there's certainly no mechanism for having an
20 individual that is saying that he's immune from
21 prosecution to be tried first and then go before the
22 Court and say he's immune.

23 The Second DCA is telling that Court, that
24 circuit court, what to do because of what has already
25 happened. There is absolutely no -- no precedence,

1 judicial precedence or statutory precedence, to have
2 an individual who claims immunity to be tried first
3 and then if he's found guilty, have a Court decide
4 the issue of immunity. And then if he's not immune,
5 to be sentenced on the trial. There's no mechanism
6 for that. We don't think that's proper, Judge. And
7 that's not what *Martin* says. The Court has read
8 *Martin* and that's not -- that's not what *Martin* says.

9 THE COURT: Well, *Martin* is very unique in the
10 aspect as Mr. *Martin* indicated. Have the Second
11 determine that he's entitled to a new immunity
12 hearing and vacate the conviction, the sentence -- or
13 the conviction, sure, I wouldn't be setting this -- I
14 wouldn't be thinking about setting this for trial.

15 But -- and that's -- when I first started
16 reading the case, that's what I anticipated was going
17 to happen at the end, that the conviction would be
18 vacated and, you know, they'd be back at square one,
19 but that's not the ruling. The ruling was to redo
20 the immunity hearing and if the Court determines that
21 he's not entitled to that, that he is to be
22 prosecuted, then the trial's done as Mr. *Martin* said.
23 It kind of is that way.

24 Plus with all the -- the uncertainty between the
25 jurisdictions more in favor of setting it for trial

1 than not, with everything that I've got before me
2 with this case, it's time to set it for trial. I'm
3 going to go ahead and set it. It's going to be out a
4 ways, but I really don't see any other option. It's
5 time. It needs to be on the trial calendar.

6 I know it's a huge undertaking, all the more
7 reason why I want to get it set and be working
8 towards that date, but a lot of the work has been
9 done. You know, so much of the work has already been
10 done: The depos, the experts. I would think
11 90 percent has been covered on the trial prep, at
12 least, in some fashion.

13 So I am looking at dates in January and
14 thereafter. I don't anticipate having any guidance
15 from the Supremes by then, but I would love it if
16 they ruled on that question.

17 MR. MICHAELS: So if the Court is just going to
18 set it for trial and the Court's mind is already made
19 up, then I'm going to ask for it to be set further
20 out so then we can file a motion and have an immunity
21 hearing heard based on *Martin*.

22 MR. MARTIN: Judge, the problem with that is
23 *Martin* isn't the law of the land. It's been
24 certified. The Court -- we are not bound by *Martin*;
25 we are not bound by *Love*.

1 So for them to say, well, and threaten you with,
2 well, I'll just file an immunity hearing, they have
3 no grounds to do it.

4 MR. MICHAELS: And therein lies the problem,
5 Your Honor. If indeed -- and I agree with Mr. Martin
6 on that point. It's not res judicata, so I got that.

7 But now we're talking about this Court saying,
8 well, look, in *Martin* they said, go ahead and just
9 set it -- you know, have another hearing and if the
10 hearing comes back that he isn't entitled to
11 immunity, then go ahead and sentence him for the
12 conviction he got. So now we're saying that part of
13 it is all right, but part of it isn't. So I -- you
14 know, that's the problem we have here.

15 THE COURT: I don't -- I don't follow you on
16 that part, what part is okay and what's not. I
17 thought --

18 MR. MICHAELS: Well, the part the Court's saying
19 is okay is to go ahead and have a trial first and a
20 hearing later.

21 THE COURT: Well, the Second denied your writ.
22 And there's -- what else is barring me? What
23 procedurally -- what would you suggest? Just wait
24 for a couple more years for the Supremes to rule in
25 this?

1 MR. MICHAELS: Not a couple more years.

2 THE COURT: Well, it's probably going to be
3 every bit of 12 months, so let's say a year. I'm
4 just guessing on that, but I've got a pretty solid
5 basis for that. It takes the Supremes a lot of time
6 to thoughtfully go through everything before them, so
7 I'm not seeing it happen. I mean, just your writ
8 took, what, eight months at the Second to get decided
9 on?

10 MR. MARTIN: No, less than eight weeks. It took
11 them nine months to get it to the Second DCA.

12 THE COURT: Oh, okay. All right.

13 MR. MICHAELS: To get the response.

14 THE COURT: Okay. All right. Well --

15 MR. MICHAELS: So we're going to set it for
16 trial. Then, let's say, a year from -- I'm just
17 playing this out, Judge. I'm not trying to aggravate
18 the Court. I'm just trying to try to make sense of
19 this.

20 We're going to set it for trial. The Court said
21 January, so sometime in the beginning of the year.
22 Then using the Court's timetable, a year from now the
23 Supremes decide. And then they say a year from now
24 that Mr. Reeves gets another stand your ground
25 hearing with a shifting of the burden.

1 THE COURT: Uh-huh.

2 MR. MICHAELS: By that point, if he is --
3 obviously, if he's found not guilty, that doesn't
4 happen.

5 THE COURT: Right.

6 MR. MICHAELS: If he is found guilty at that
7 point, he's what, convicted and sentenced?

8 THE COURT: No -- well, I mean, unless --

9 MR. MARTIN: Yes.

10 THE COURT: -- unless the Supremes have ruled,
11 we're kind of in uncharted waters with that, but I
12 have -- procedurally, I need to set it for trial.
13 That's all there is to it. With everything that I've
14 got before me, there's just no basis not to.

15 I know -- I know we may be -- there may be some
16 issues that come up depending on when the Supremes
17 rule and how they rule, but, you know, let's say they
18 follow with the Second and say it's retroactive.
19 Then, yeah, we'll get some guidance to some extent
20 and we'll go -- go from there. But I can't just sit
21 by on this case or any other and just wait.

22 MR. MICHAELS: And I understand that. And if we
23 weren't under such unique circumstances that the
24 Court, you know, has acknowledged, then I wouldn't be
25 asking not to set a trial date. This isn't, don't

1 set a trial date just because we're trying to buy
2 more time.

3 I can promise you that Mr. Reeves has been
4 wanting to go to trial from day one and has been not
5 very happy about the delays. That's not what we're
6 trying to do here. We're not delaying it just to
7 delay it, Your Honor.

8 The Court knows -- I've practiced in front of
9 this Court for many years. And I'm not an individual
10 that comes here to ask the Court to delay things just
11 for the heck of it. My problem is that there's so
12 many unique situations, I don't want to create an
13 unforeseen problem down the road with this that we
14 don't necessarily have to create. That's my two
15 cents.

16 THE COURT: And I thoroughly agree. You know,
17 we're faced with this situation -- was it last year
18 or the year before with the death penalty issues. I
19 had multiple death penalty cases pending in the
20 pipeline and, you know, the same thing there. I
21 can't just sit and wait. And that took probably
22 10 or 11 months from the first hint that there was
23 going to be a change to, you know, when changes were
24 made. So I can't afford that kind of time to just
25 sit on a case.

1 And I'm well aware of the possible
2 ramifications. I've considered them carefully. I
3 get it. I'm not one to set a trial that I think is
4 just going to end up, you know, in a mess, but in
5 weighing my two options, I've come to the decision
6 that I need to set it for trial.

7 And I don't come to that lightly. I understand
8 the huge financial burden the trial's going to be on
9 both parties, the State and the Defense; however, I'm
10 also aware that a lot of that financial burden has
11 been borne already through a lot of the discovery
12 process and through the immunity hearing. So I know
13 there's a lot done. That's what I'm getting at.

14 And I'm just going to -- I'm just going to do
15 it. I'm just going to set it for trial.

16 MR. MICHAELS: Just so I feel that I've
17 advocated the best I can, my understanding is the
18 Court read *Martin* --

19 THE COURT: Oh, yeah.

20 MR. MICHAELS: -- and looked at *Martin* and said,
21 I'm going to be able to set a trial date on this. Is
22 that pretty fair to say, Judge?

23 THE COURT: Yes.

24 MR. MICHAELS: Okay. All right. Thank you.

25 THE COURT: Again, because it's not -- it's not

1 final. They certified it. So we're clear for
2 takeoff in my humble opinion.

3 All right. So the dates I have starting in
4 January, I have January 14th. And let me back up a
5 minute. Are we seeking two weeks, not three? Do we
6 need three?

7 MR. MARTIN: Well, we have a jury selection.
8 And I don't know how long that's going to take.

9 MR. MICHAELS: And it was a two week immunity
10 hearing --

11 THE COURT: I know.

12 MR. MICHAELS: -- Your Honor, so --

13 THE COURT: Three weeks.

14 MR. MARTIN: I truly hope not.

15 THE COURT: I do, too, but realistically, I'm
16 going to go ahead. And since we're starting a new
17 year, I might as well make sure we got all the time
18 we need.

19 All right. So whichever trial week we come up
20 with, I'll make it a three weeker. As it stands
21 right now, my typical trial weeks would be
22 January 14th, January 28th, every two weeks pretty
23 much. February 11th, February 25th, then March 11th,
24 and March 25th.

25 So does anybody have anything really pressing or

1 any need for any particular time that far out?

2 MR. MARTIN: Judge, the problem I have now, it's
3 going to be the State's burden. I've always found,
4 especially with a lot of witnesses, trying to do
5 trial prep over the holidays with witnesses -- we'll
6 be working. They don't have that same interest, if
7 you will.

8 I would like it the end of February and March.
9 That way we can get past the holidays and then I can
10 begin the trial prep with the witnesses so that I'm
11 not taking up their time because I have a lot to go
12 through.

13 THE COURT: Okay.

14 MR. MARTIN: And also I think the way we did it
15 last year -- yeah, it's been last year -- is we set
16 aside kind of like November, December for all the
17 motion practice. And the Court's well aware that I
18 filed two motions that the Court has not ruled on and
19 I'm going to resubmit those. And we'll probably have
20 some other motions seeing that we're in a different
21 phase. So I'd kind of like to not do it in January
22 just for that reason. It's just so difficult trying
23 to --

24 THE COURT: I agree.

25 MR. MARTIN: -- do the trial prep.

1 THE COURT: Any argument with that,
2 Mr. Michaels?

3 MR. MICHAELS: No, Judge. I'm asking the Court
4 to push it out as far as possible --

5 THE COURT: I know.

6 MR. MICHAELS: -- hoping that I'll get an answer
7 here from the Supreme Court, so that's just fine.

8 THE COURT: Yeah, let's -- if we do the -- we
9 could do the February 25th and then the March 4th and
10 March 11th, those three weeks. Does that sound
11 doable?

12 MR. MARTIN: That's good.

13 THE COURT: All right. We'll put her down
14 there. 2/25 is a Monday. Calendar call for that day
15 is the Wednesday prior which is 2/20. Obviously, I
16 know counsel for both sides has been very diligent in
17 working well as far as keeping each other apprised of
18 any issues arising. And I anticipate fully that
19 you'll continue to do that. And if any obvious
20 glaring problem arises, please let everybody know as
21 soon as possible. I know you all will do that.

22 But for now, we'll go ahead and put it down
23 for -- the first day of jury selection will begin
24 February 25th, calendar call, 2/20. And trial will
25 be the following -- I'll set aside three weeks from

1 2/25.

2 MR. MICHAELS: And I can just hear Mr. Escobar
3 whispering in my ear for, you know, potentially a
4 fourth week. And I only say that because, you know,
5 I've seen Mr. Martin's preparations for trials and I
6 know what Mr. Escobar's preparations for trials are
7 and I've seen his presentation. I know they're very
8 thorough as are Mr. Escobar's. And I know we took
9 two weeks on the stand your ground, so, I mean, in
10 case it's needed, you know, we really have to think
11 about --

12 THE COURT: I'll schedule light --

13 MR. MICHAELS: -- potentially --

14 THE COURT: -- the following -- that fourth
15 week. But also, you know, the more time we're
16 looking at for a trial, the more potential venires
17 we're going to need. And we're going to need to
18 discuss that, but we'll certainly discuss that closer
19 to trial time in pretrial conferences, but I'm
20 anticipating a significant number, like 500 or more.

21 MR. MARTIN: Judge, would it be all right if --
22 now that we -- you now have jurisdiction, can we keep
23 this file on the calendar, say, every three or four
24 months status check? We can appear by phone. If
25 there's nothing from the Florida Supreme Court or if

1 we have issues that we need to address, we can use
2 that time to set motion practice in order to resolve
3 issues. Would that be all right?

4 THE COURT: That would be a good idea.

5 MR. MARTIN: I have a fly.

6 THE COURT: I know. I don't know where he came
7 from, but we are in Dade City.

8 All right. Let's see, do you want to go ahead
9 and set a status check now then, say three months?

10 MR. MARTIN: I would. The first week in
11 September? We could do it -- I don't know what your
12 calendar or how you would like to do it -- on a
13 Friday morning or something?

14 THE COURT: Oh, Friday mornings I do probation
15 violations. Either a Thursday afternoon, say 1:30,
16 or Monday afternoon. Typically, I have motions that
17 I can cram this in.

18 Anybody have any preferences?

19 MR. MARTIN: No, either one would be fine,
20 Judge. We could do it August 27, which is a Monday.

21 MR. MICHAELS: That doesn't sound like
22 September.

23 MR. MARTIN: No, but there is a holiday in
24 September that falls on a Monday.

25 THE COURT: Yep. Labor Day, I think.

1 MR. MARTIN: Yes. So that's why I was jumping a
2 little bit, but we can do it on September 6th.

3 THE COURT: Yeah, the 3rd is Labor Day. Let's
4 do it the following week if we could, the 13th.

5 MR. MARTIN: All right.

6 THE COURT: At 1:30?

7 MR. MARTIN: Sure.

8 THE COURT: September 13th at 1:30. Status
9 check. All attorneys can appear by phone, if you
10 wish.

11 MR. MARTIN: Perfect. Thank you for that.

12 THE COURT: All right. Very good. Thank you,
13 everybody.

14 Any other matters we need to address today?

15 All right. We'll be in recess then. Thank you.

16 MR. MARTIN: Thank you.

17 (Proceedings concluded.)

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STATE OF FLORIDA)
)
COUNTY OF PASCO)

I, Melinda McClain, Registered
Professional Reporter, certify that I was authorized
to and did stenographically report the foregoing
proceedings and that the transcript is a true
record.

DATED this 4th day of June, 2018.

Melinda McClain, RPR