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Churchill v. State

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"[I]n appeals from a conditional no contest plea, the appellate court is bound by a stipulation that a pre-plea ruling by the trial court is dispositive of the case."

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In many criminal matters, whether evidence is admissible can decide the outcome of the case. Winning or losing a pretrial motion can be the critical moment in determining whether counsel should advise a client to proceed to trial or enter a plea. Often, after the loss of a pretrial motion, a client will ask whether the trial court's decision is appealable and, if so, the chance of success on appeal if a plea is entered. The difficulty advising a client with regard to the first part of this question –whether the issue is appealable–has recently become easier to answer based on the Florida Supreme Court's decision in Churchill v. State, 219 So. 3d 14 (Fla. 2017).

In Churchill, the Florida Supreme Court considered whether an appellate court has jurisdiction and must review a trial court's ruling on a pretrial motion on the merits when it concludes that the motion was not dispositive of the case. The court concluded that the decision turns on whether the parties stipulated that the issue was, in fact, dispositive. This article explores the precedent that existed prior to the Florida Supreme Court's decision in Churchill, outlines the reasoning behind the court's unanimous decision, provides practical advice for practitioners who must advise their clients whether to enter a plea, and discusses the trial judge's responsibility to evaluate the dispositive nature of its pretrial rulings.

I. BACKGROUND

A. Churchill – The Trial Court and Fifth District Court of Appeal Proceedings

In Churchill, the State charged Mr. Churchill with one count of conspiracy to manufacture methamphetamine, one count of manufacturing methamphetamine, and one count of possession of a listed chemical. Mr. Churchill's trial counsel filed a motion in limine seeking to preclude the State from offering testimony or evidence about the identification of the substances that were the basis for the charges. In the motion, Churchill argued that the law enforcement officer who tested the alleged methamphetamine with a presumptive field test kit failed to meet the Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), standard for admissibility. The substance was destroyed during testing, so the only potential evidence at trial would have been the officer's testimony regarding the test and his opinion based on his experience and training.

Following a hearing, the trial court denied the motion. Thereafter, Mr. Churchill entered a plea of *nolo contendere* to all three of the charged offenses but specifically reserved his right to appeal the denial of his motion. Generally, a defendant may not appeal from a guilty or *nolo contendere* plea unless the defendant "expressly reserve[s] the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved," or as otherwise provided in Florida Rule of Appellate Procedure 9.140(b)(2)(A).

Prior to sentencing, Mr. Churchill's trial counsel and the State signed a written plea agreement. The plea form specifically reflected that Mr. Churchill was entering his plea and "[r]eserving [his] right to appeal his Motion to Suppress [and] Motion in Limine and State agrees this would be dispositive." During the plea colloquy, the State, Mr. Churchill, and the court unequivocally stated on the record that the motion was dispositive of the State's charges against him. Mr. Churchill then entered an open plea and the trial court adjudicated him guilty on all three counts. The trial court ultimately sentenced Mr. Churchill to five years' prison (count one) consecutive to a sentence he was already serving, fifteen years' prison (count two) concurrent to count one, and seven years' prison (count three) consecutively thereafter.

Mr. Churchill filed a timely notice of appeal and submitted briefs to the Fifth District Court of Appeal. However, the Fifth District declined to address the merits of the appeal, holding that it did not have jurisdiction because the denial of Mr. Churchill's motion in limine was not dispositive. Churchill v. State, 169 So. 3d 1260 (Fla. 5th DCA 2015). Although the Fifth District acknowledged that the parties had stipulated that the trial court's ruling was dispositive, it nevertheless determined that it was not bound to accept the stipulation. Id. at 1261 n.2 (citing Ashley v. State, 611 So. 2d 617, 618 (Fla. 2d DCA 1993)). The Fifth District reasoned, regardless of any stipulation, that "[a]n issue is legally dispositive only if, regardless of whether the appellate court affirms or reverses the lower court's decision, there will be no trial of the case." Id. (quoting Levine v. State, 788 So. 2d 379, 380 (Fla. 4th DCA 2001)). It concluded that the trial court's order was not dispositive and therefore held that Mr. Churchill could not challenge its ruling on direct appeal. Accordingly, the Fifth District dismissed Mr. Churchill's appeal outright, and Churchill appealed to the Florida Supreme Court.

Following the Fifth District's ruling, Mr. Churchill filed a pro se jurisdictional brief seeking to invoke the discretionary review of the Florida Supreme Court. He argued that the Fifth District's decision was in direct and express conflict with the Third District's en banc decision in Finney v. State, 420 So. 2d 639 (Fla. 3d DCA 1982). In Finney, the Third District held that an appellate court has jurisdiction to review a pretrial ruling based on the parties' stipulation that the ruling was dispositive

and that the court need not reach the issue of whether the ruling was actually dispositive. Id. at 642. The Florida Supreme Court accepted discretionary review to resolve the conflict. The acceptance itself was important, because it meant the Florida Supreme Court was going to resolve a question that had created a great deal of uncertainty since it originally authorized such pleas in its 1971 decision, State v. Ashby, 245 So. 2d 225 (Fla. 1971).

B. Ashby and its Progeny

In Ashby, the Florida Supreme Court held that a defendant in a criminal case may plead nolo contendere, conditioned on the right to preserve a question of law for appellate review. Id. The court reasoned there was no problem allowing this avenue of relief "since it expedites resolution of the controversy and narrows the issues to be resolved." Id. at 228. Additionally, the Court noted that "[t] he practice is conceptually similar to that of stipulation of facts or law, not uncommon in civil and criminal trials." Id.

The court subsequently narrowed Ashby in its 1979 decision, Brown v. State, 376 So. 2d 382, 384 (Fla. 1979), when it held that a "nolo plea is permissible only when the legal issue to be determined on appeal is dispositive of the case." In Brown, the court did not expressly define "dispositive," determining only that a confession was not necessarily dispositive of a case. Id. at 385 ("[W]e hold that as a matter of law a confession may not be considered dispositive of the case for purposes of an Ashby nolo plea."). However, the court also noted, "By this holding we do not mean to imply that a confession could not be dispositive of a case for other purposes. We simply decide that the benefits derived from permitting the appeal of confession issues after an Ashby nolo plea are outweighed by the disadvantages militating against it." Id. at 385 n. 5. The court did identify three types of pretrial rulings that it concluded were illustrative of dispositive legal issues: rulings on "[m]otions testing the sufficiency of the charging document, the constitutionality of a controlling statute, or the suppression of contraband for which a defendant is charged with possession." Id. at 385.

Since the Florida Supreme Court articulated its rationale in Brown, whether a legal issue is dispositive has consistently been considered a jurisdictional question. See, e.g., Mylock v. State, 750 So. 2d 144, 146 (Fla. 1st DCA 2000) (recognizing that the parties stipulated to a dispositive issue and concluding that therefore "we have jurisdiction."). All of Florida's district courts have interpreted Brown to hold that "[a]n issue is dispositive only if, regardless of whether the appellate court affirms or reverses the lower court's decision, there will be no trial of the case." Morgan v. State, 486 So. 2d 1356, 1357 (Fla. 1st DCA 1986); see also Jones v. State, 806 So. 2d 590, 592 (Fla. 5th DCA 2002).

Not long after Brown was decided, the First District considered Jackson v. State, 382 So. 2d 749 (Fla. 1st DCA 1980), aff'd, 392 So. 2d 1324 (Fla. 1981). In Jackson, the parties had stipulated that a confession was dispositive, and the court had to determine whether it had authority to consider the appeal on the merits. The First District held:

> [W]e do not consider [Brown] as precluding a stipulation, by the State and the defendant, such as we have in the record here, in which both sides agree that the State has no case and would be unable to proceed with the prosecution without the confession. Under these circumstances we concluded that the ruling on the admissibility of a confession would be 'dispositive of the appeal [.]' Having so considered it, we reviewed the appeal on the merits[] and affirmed the ruling of the trial court.

Id. at 750. The Florida Supreme Court affirmed Jackson without an opinion. 392 So. 2d 1324 (Fla. 1981).

After affirming Jackson, the Florida Supreme Court did not explicitly resolve the question of whether party stipulations regarding the dispositive nature of a pretrial ruling could confer binding jurisdiction on the appellate court. However, the Third District addressed the issue en banc in Finney, creating the conflict the Florida Supreme Court was asked to resolve in Churchill.

In Finney, the Third District reached a conclusion very similar to the First District's conclusion in Jackson—that stipulations do confer binding jurisdiction on appellate courts. 420 So. 2d at 642. In reaching its decision, the panel specifically reasoned:

> Where a stipulation has been entered into by both sides, the court will not be called upon to hear testimony as to the dispositive nature of the evidence. A stipulation is the parties' recognition that, for whatever reason, they have presented all of the evidence that they care to and each is willing to abide the appellate consequences regarding the grant or denial of the motion to suppress. Because this case falls squarely in line with Jackson . . . we must conclude that by virtue of the stipulation, the present motion to suppress is dispositive of the issue on appeal.

Id. In a special concurrence, Judge Pearson aptly noted the type of confusion that can arise when trying to determine what a trial court considers dispositive versus what an appellate court considers dispositive. Judge Pearson stated:

> Today's [en banc] decision should put an end to the unseemly spectacle of the State, having agreed through its representative at the trial level (the State Attorney) that a matter is dispositive, later arguing, through its representative in the appellate court (the Attorney General) that the matter is not dispositive and that we are without jurisdiction to hear the defendant's appeal. This difference in position was never, in my view, attributable to an act of bad faith by the State. Instead, the difference in position is accounted for by the difference between Jackson v. State, [382 So. 2d 749], and Brown v. State, [376 So. 2d 382]. Thus, when the State Attorney said "dispositive," he was talking Jackson—that is, committing the State not to prosecute further in the event the defendant prevailed on appeal; when the Attorney General said "not dispositive," he was talking Brown—that is, contending that even if the defendant prevailed on appeal, it was still *legally* possible for the State to continue with the prosecution. But what the Attorney General ignored is that where there is an agreement on dispositiveness, Brown's "legal dispositiveness" is, by definition in Jackson, irrelevant.
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> Jackson is a welcome retreat from Brown. The concern in Brown that the expeditious resolution of the controversy would be thwarted by permitting a defendant to appeal legally nondispositive pre-plea rulings is obviated where the parties agree that the appellate court's decision will end the case one way or another. When they so agree, the defendant does *not* face the prospect of a trial if he prevails on appeal; the appellate decision concludes the matter, and the precious resources of the courts are saved by not forcing the defendant to go through a trial for the singular purpose of preserving an issue for review.

Id. at 643–44 (Pearson, J., specially concurring) (emphasis added) (footnotes omitted).

The Finney decision and line of reasoning was continued by the First District's en banc decision in Zeigler v. State, 471 So. 2d 172, 175 (Fla. 1st DCA 1985). The court explained:

> We focus first upon the fact . . . that this case is here by way of a joint stipulation between appellant and the state that the issue of the voluntariness of the confession absent the presence of counsel was in fact dispositive of the prosecution's case. *This court has previously held that such a stipulation is sufficient to establish the dispositiveness of an issue concerning a confession, even though such issue would otherwise be deemed not dispositive as a matter of law.* Jackson v. State, 382 So. 2d 749 (Fla. 1st DCA 1980), aff'd, 392 So. 2d 1324 (Fla. 1981). Therefore, *unless this court is prepared to "go behind" the stipulation of the parties in an effort to ascertain whether the issue is truly dispositive, we would be bound to decide the issue reserved for review by the defendant*, and thus would have no occasion for independent examination of the record to determine whether, even if the trial court erred in denial of the motion to suppress, other evidence in the record could be used equally as well to establish guilt.

Id. (emphasis added).

Shortly after deciding Zeigler, a separate First District panel reached a contrary decision in Morgan v. State, 486 So. 2d 1356 (Fla. 1st DCA 1986). In Morgan, the court concluded that a stipulation was not dispositive and that was not bound to exercise jurisdiction over the merits of the appeal. Id. at 1359. Although the First District determined the stipulated legal issue was not actually dispositive and that the appeal could be dismissed, it also held that the matter should be remanded to the trial court with a direction that "[i]f the defendant so moves, the trial court shall vacate and set aside the judgment and sentence and shall allow the defendant to withdraw his plea of nolo contendere and reinstate his not guilty plea." Id. In an accompanying footnote, the court also remarked that "[f]airness dictates that the defendant should be given the opportunity to withdraw his plea of nolo contendere." Id. at 1359 n.3. While the Morgan court did not go so far as to ultimately decide whether it was "*bound* to consider an appeal on the merits where the state ha[d] stipulated to dispositiveness," the court noted that "[o]ne could certainly reasonably take the position that this pretermitted question has already been authoritatively answered by this Court in Ziegler." Id. at 1358-59 n.2.

Almost immediately prior to the Florida Supreme Court accepting Churchill for review, Judge Makar of the First District authored a concurring opinion in Beermunder v. State, 191 So. 3d 1000 (Fla. 1st DCA 2016), outlining the First District's jurisprudence on this issue. In his concurrence, Judge Makar reviewed and evaluated the line of cases following Zeigler and Morgan. Judge Makar concluded that between Zeigler (indicating that the stipulation controlled) and Morgan (allowing the appellate court to reject jurisdiction), Ziegler seemed to control more often and was the more appropriate line of authority to adopt. Id. at 1003. With this background, the majority position in Florida, prior to Churchill, appeared to be that "[t]he operative principle is that a stipulation of dispositiveness is sufficient to establish a basis for appellate review 'even though such issue would otherwise be deemed not dispositive as a matter of law.' The parties have agreed the case is over and that there will be no trial thereby establishing the finality necessary for review." Id. at 1001-1002 (quoting Zeigler, 471 So. 2d 175). However, whether the appellate court was *bound* to accept the dispositive stipulation was still unclear.

Thus, prior to the Florida Supreme Court's decision in Churchill, there were essentially three possible outcomes for a defendant seeking to appeal a pretrial motion after entering a plea: (1) the appellate court could conclude, as in Jackson, Ziegler, and Finney, that a stipulation as to dispositiveness was binding and conferred jurisdiction; (2) the appellate court could conclude that the stipulation was not binding, but that fairness required that the defendant receive an opportunity to withdraw his or her plea if the issue was not dispositive, as in Morgan; or (3) the appellate court could conclude, as the Fifth District did in Churchill that the stipulation was not dispositive and dismiss the appeal without

reaching the merits or allowing the defendant an opportunity to withdraw his plea. The first position centered on the parties, deferring to the parties' and the trial court's determination of dispositiveness. The second position relied on the appellate court's authority to ultimately review and reject stipulations of dispositiveness, but allowed the defendant to withdraw his or her plea on remand. The third position focused on the appellate court's authority to reject a stipulation altogether and to dismiss the appeal without considering the merits or allowing the defendant and opportunity to withdraw his or her plea. These diverse positions were before the Court when considering the merits of *Churchill*.

II. FLORIDA SUPREME COURT DECISION IN CHURCHILL

The Florida Supreme Court in Churchill unanimously held that, "in appeals from a conditional no contest plea, the appellate court is bound by a stipulation that a pre-plea ruling by the trial court is dispositive of the case." 219 So. 3d at 14. The court stated that "[c]ontrary to the Fifth District's decision in Churchill, the district courts have jurisdiction to review the merits of a conditional no contest plea when the State stipulates that an issue reserved for appeal is dispositive of the case." Id. at 17 (citing Fla. R. App. P. 9.140(b)(2)(A)(i)). Relying on Jackson and Finney, the Florida Supreme Court held that there is no need "to determine whether a particular issue will end the case because the stipulation of dispositiveness establishes that the State cannot or will not continue with its prosecution if the defendant prevails on appeal." Id. This is so because "the stipulation on its own 'is sufficient to establish a basis for appellate review even though [an] issue would otherwise be deemed not dispositive as a matter of law.' " Id. (citing Beermunder, 191 So. 3d at 1001 (Makar, J., concurring)). The court concluded that "requiring stipulations to be binding will further the interests of judicial efficiency and expeditious resolution of controversies cited in Ashby and Brown." Id.

The Florida Supreme Court's holding hinged on the unequivocal stipulation between the parties. Specifically, the court stated, "[b]ecause the parties in this case clearly stipulated that the trial court's ruling on Churchill's motion in limine was dispositive of the case, the Fifth District was bound to accept that stipulation and consider the merits of Churchill's appeal." Id. at 18.

III. PRACTICE POINTERS

Churchill is an important case that provides guidance for plea bargaining and demonstrates how a seemingly simple issue can become increasingly difficult and muddy over time. While the case resolves a split amongst the district courts of appeal, its limitations are important to recognize for both trial counsel and trial courts.

A. Trial Counsel

From a practical standpoint, this case is limited to nolo contendere pleas where there is an unequivocal stipulation of dispositiveness. Trial counsel must first ensure that a client wanting to enter a plea and reserve his or her right to appeal does so by entering a nolo contendere plea rather than by pleading guilty. See Ashby, 245 So.2d at 228 (observing that "[t]here appear[ed] to be no policy weighing against acceptance of pleas of nolo contendere reserving questions of law, [but that a] different result would obtain if the plea was one of guilty rather than nolo contendere"). Trial counsel should specifically cite Florida Rule of Appellate Procedure, 9.140(b)(2)(A)(i), which authorizes this type of appeal. Second, trial counsel must ensure that the parties and the trial judge approve the stipulation and clearly identify the scope of the issue to be raised on appeal on the record to ensure

preservation. See, e.g., Aybar v. State, 207 So. 3d 340, 341 (Fla. 3d DCA 2016) (concluding that the court lacked jurisdiction and dismissing the appeal because "[t]he record [did] not reflect a written order by the trial court finding that the suppression ruling would be dispositive, nor [was] there a stipulation in the record that the ruling would be dispositive").

Significantly, Churchill does not directly impact cases where there is a dispute over whether an issue is dispositive. Without a stipulation, the appellate court will likely dismiss the subsequent appeal. See, e.g., Aybar, 207 So. 3d at 341; Daniel v. State, No. 2D16-535 (Fla. 2d DCA Dec. 27, 2017). Trial counsel should also take note that misadvising a client that a legal issue is dispositive may be a cognizable postconviction claim for ineffective assistance of counsel. See, e.g., Anderson v. State, 183 So. 3d 1146, 1148 (Fla. 5th DCA 2015) ("A claim that a defendant was induced to enter a plea upon counsel's erroneous advice that an issue was preserved for appeal is facially sufficient to show the requisite prejudice."). When advising clients about taking a plea, trial counsel should carefully consider all of these issues.

B. Trial Judges

Although not expressly discussed in Churchill, one important consideration concerning the acceptance of these stipulations is the role of the trial judge. A primary argument set forth in the State's briefing dealt with the parties stipulating to nondispositive issues that have little to do with the merits of the case and, therefore, waste judicial resources. In response, Mr. Churchill pointed to the line of cases explaining that the trial judge is the gate-keeper for evaluating these stipulations.

As the court noted in Brown, the trial court has "wide discretion to accept or reject an Ashby nolo plea based upon his [or her] perception of the dispositive nature Vel non of the legal issue reserved for appeal." 376 So. 2d at 385. Prior to Churchill, several appellate courts affirmatively placed the determination of whether an issue was dispositive on the trial courts because the "the trial court is obligated to determine the dispositive nature of the reserved question." Everett v. State, 535 So. 2d 667, 669 (Fla. 2d DCA 1988); see also Holden v. State, 90 So. 3d 902, 903 (Fla. 1st DCA 2012); Diaz v. State, 34 So. 3d 797, 801 (Fla. 4th DCA 2010). The Second District held that "[i]t is the trial court's *duty* to announce whether preserved issues are dispositive." Ramsey v. State, 766 So. 2d 397, 397 n.1 (Fla. 2d DCA 2000) (emphasis added); see also Moore v. State, 586 So. 2d 64,64 (Fla. 2d DCA 1991) ("[T]he trial court is obligated to determine whether the issue reserved for appeal is dispositive."). Relying on this line of cases, Mr. Churchill argued that the "duty" and "obligation" to determine whether a preserved issue is dispositive should be the province of the trial court because resolution by the trial court would correctly inform a defendant regarding the availability of appellate relief and thus reduce the likelihood that the defendant would seek a meritless appeal. Additionally, evaluating the issue at the trial court level "insure[s] a timely opportunity for the defendant to evaluate withdrawal from the plea agreement." Everett, 535 So. 2d at 669.

Importantly, while Churchill holds that an appellate court may not go behind a stipulation of the parties, it does not preclude appellate review of trial court's ruling on a dispositiveness when that issue is in dispute. See, e.g., Jones, 806 So. 2d at 592 (Fla. 5th DCA 2002) (affirming the trial court's determination that the denial of the defendant's motion to suppress was not dispositive). Therefore, it is critically important that a trial court make findings on the record and clearly resolve the issue of dispositiveness before accepting a plea to facilitate appellate review. See id. (noting with approval the trial court's "detailed explanation regarding the right to appeal a dispositive motion . . . and that [the defendant's] motion was not dispositive"). As such, the role of the trial judge cannot be forgotten or understated.

IV. CONCLUSION

In conclusion, addressing the issue of dispositiveness on the record and before entering a plea will protect the attorney, the client's appeal, and the trial judge. If a client wants to appeal, trial counsel must make sure the legal issue and its dispositive nature is clear on the record. The trial court judge must articulate on the record that the issue is dispositive. If all the parties are adequately informed and take care to properly preserve the pretrial issue, the defendant's appeal will be heard on the merits and all parties will be protected.

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