

Case Law Update
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Supreme Court of Florida

[Williams v. State](#), SC16-2170 (Jan. 4, 2019) (revised opinion)

Williams was found guilty of first-degree premeditated murder. The jury acquitted him on the charge of robbery, but found him guilty of the lesser included offense of theft. Williams asserted self-defense. After finding that he set forth a prima facie case of self-defense, the Supreme Court concluded that the State had the burden of refuting the claim beyond a reasonable doubt.

After reviewing all of the evidence, the Supreme Court noted that the “self-defense theory was only applicable if the jury did not find that the altercation began because of a robbery attempt. Once the jury entered its verdict finding Williams guilty of the lesser included offense of theft, logic dictates that the jury did not believe that the altercation began because of the robbery attempt. Accordingly, the State failed to rebut Williams’ theory of self-defense and the trial court improperly denied Williams’ motion for judgment of acquittal as to count one (first-degree premeditated murder) filed after the jury entered its verdict. However, viewing the evidence in a light most favorable to the State, the trial court did not err in denying the motion as to count five (attempted murder) because the evidence and testimony provided at trial demonstrated that Williams hesitated before turning to shoot Johnson. A reasonable jury could have concluded that the shot fired at Johnson was not fired in self-defense.”

[In Re: Standard Jury Instructions in Criminal Cases – Report 2018-09](#), SC18-1692 (Jan. 4, 2019)

The Court approved for publication and use amendments to numerous standard instructions. The significant changes noted by the Court are:

Many of the amended instructions relate to various DUI offenses or offenses involving flight from law enforcement, for which the definition of “vehicle” is updated “to include as exceptions ‘personal delivery devices’ and mobile carriers.” In several instructions, the definition of “motor vehicle” deletes “motorcycle” and adds the same exceptions noted above.

Two instructions on aggravated fleeing add a note to the trial court and an additional instruction “pertaining to whether the defendant caused the victim’s injury or death as part of aggravated fleeing or eluding.”

[Reese v. State](#), SC18-815 (Jan. 4, 2019)

Reese appealed the denial of a successive postconviction motion raising a Hurst claim. The motion was properly denied as Hurst did not apply retroactively to a death sentence that became final prior to the issuance of the decision in Ring v. Arizona, 536 U.S. 584 (2002). Additionally, pursuant to Lambrix v. State, 227 So. 3d 112, 113 (Fla.2017), the Supreme Court rejected the claim that its ““decisions regarding the retroactivity of *Hurst v. Florida* and *Hurst* violate equal protection.”

Eleventh Circuit Court of Appeals

[Meders v. Warden, Georgia Diagnostic Prison](#), 14-14178, 15-14734 (Jan. 4, 2019) (on rehearing)

This is an appeal from the denial of a federal habeas corpus petition in which that court granted a certificate of appealability as to one claim of ineffective assistance of trial counsel at the guilt phase of a capital case. On rehearing, the three-judge panel of the Eleventh Circuit rewrote section II of the Court’s original opinion, addressing the deferential standards under AEDPA. The new panel opinion notes that a motion for rehearing en banc is still pending in the Court.

On the question of prejudice for ineffective assistance of counsel, the Eleventh Circuit observes that applying the deferential standard “does not mean we are to flyspeck the state court order or grade it. What it means is we are to focus not merely on the bottom line ruling of the decision but on the reasons, if any, given for it. The bottom line here is the ruling by the state trial court that counsel’s failure to use certain pretrial statements of witnesses and police reports coupled with their failure to object to certain evidence did not amount to ineffective assistance of counsel. The reason the state court gave for that ruling is that there was no reasonable probability of a different result if counsel had acted as Meders claimed they should have. The reason there wasn’t, the court explained, is that the evidence counsel failed to present was cumulative and outweighed by the strong evidence of guilt, and the objections that they failed to make would have been futile or otherwise would have made no difference anyway.”

“We have explicitly rejected the proposition that a state court decision involves an unreasonable application of federal law and is not entitled to deference unless that court’s opinion on its face ‘shows its work’ by explicitly mentioning ‘all relevant circumstances’ that the defendant argues in support of relief. . . . That proposition captures Meders’ position.”

The Court further addresses the significance of the Supreme Court’s recent decision in Wilson v. Sellers, 138 S.Ct. 1188 (2018), and observes that it still remains true that “deference is due even to those state court rulings for which no rationale or reasoning at all is given,” and, if that is true, it “would be irrational to afford deference to a decision with no stated explanation but not afford deference to one that states reasons, albeit not as thoroughly as it could have.” Ultimately, so “long as any fairminded jurist could agree with the state court’s ruling, we must deny federal habeas relief.”

Applying those standards, as rewritten in the revised opinion, the Court proceeded, as in the prior opinion, to conclude that the federal habeas petition was properly denied and that the state court disposition was entitled to deference.

First District Court of Appeal

Teachman v. State, 1D17-759 (Jan. 2, 2019)

Teachman appealed convictions for sexual battery and lewd and lascivious molestation of a child. The First District affirmed, rejecting claims that the trial court erred in denying his motion to suppress a confession and in excluding evidence of the victim’s consensual sexual relationship with her boyfriend.

An interview of less than 30 minutes took place in a “non-custodial setting.” Teachman was never threatened with harm and was told he was not under arrest and did not have to answer questions and could leave at any time. “Although the investigator told Appellant that things would be easier for him if he told the truth, and the investigator would tell the prosecutor if Appellant was cooperative, these comments were neither improper nor coercive.”

The Court also rejected Teachman’s argument “that his confession was involuntary, because he had met the investigator years earlier, when Appellant was himself a victim of sexual abuse. Appellant asserts that the bond of trust established by that encounter lowered his resistance to threats, promises, and misrepresentations of law.” It was Teachman who raised that prior encounter during the interview, and

the investigator minimized it and returned to the instant allegations, telling Teachman: “Well, we’re all indestructible when we’re young, and then we have to grow up, and we have to mature. So [the victim] is not telling lies; is she?” The investigator did not manipulate the prior encounter and, although the investigator offered Teachman counseling, that was only after the confession.

Remarks by the investigator, telling Teachman that his “wife told the victim to lie” were viewed by the First District as indicating “an implied promise: Confess to the allegations and the charges against Appellant’s wife will go away and one parent will remain home.” However, that did not render the confession involuntary: “Appellant never expressed any fear or concern about what would happen to his wife or children if he did not admit to the sexual acts with his stepdaughter.” And, at the end of the interview, “when the investigator asked if any promises were made in exchange for the confession, Appellant made no mention of leniency for his wife.”

The claim as to the excluded evidence was rejected because there was an inadequate proffer of the evidence at trial. While defense counsel referred to a possible motive for the victim making the accusations, “[n]o mention was made of the victim hiding her sexual relationship or that an upcoming medical examination would uncover such; the excluded evidence was that Appellant caught the victim with her boyfriend in an inappropriate behavior. But without additional facts such as those in *Lewis[v. State]*, where the sexual nature of the victim’s relationship was critical to the theory of defense, here the probative value of the minor victim’s sexual activity is substantially outweighed by the risk of unfair prejudice and is precluded from admission under section 794.022, Florida Statutes.”

Second District Court of Appeal

[Wilson v. State](#), 2D17-1590 (Jan. 4, 2019)

An appeal from a revocation of probation was dismissed as moot because Wilson completed the 13-month prison term imposed upon revocation.

[Hammond v. State](#), 2D17-3705 (Jan. 4, 2019)

Upon revocation of probation, the trial court entered both a revocation order and a corrected judgment and sentences. “When a judge originally adjudicates a defendant guilty, a second judgment upon revocation of probation is unauthorized and can cause confusion in the future.”

[Kennon v. State](#), 2D18-180 (Jan. 4, 2019)

The summary denial of a Rule 3.850 motion was reversed for further proceedings as to one claim. Kennon was convicted of two counts of first-degree murder and one count of armed burglary. He alleged that trial counsel was ineffective by failing to call as a witness one of his adversaries, whom Kennon asserted “would have testified that he and Kennon had gotten into a fight on the sidewalk at the apartment complex where the murder victim lived. Kennon argued that such testimony would have explained why Kennon’s blood was located near the crime scene thereby proving his innocence.” The trial court denied the claim in light of all of the evidence implicating Kennon in the home invasion.

This testimony was exculpatory in nature, if believed. The evidence of guilt to which the trial court alluded was all circumstantial, and some of it did not clearly link Kennon to the crime. “The testimony that Kennon’s adversary could have provided may have cast doubt on Kennon’s guilt.” On remand, the trial court must either attach records conclusively refuting the claim or conduct an evidentiary hearing.

Third District Court of Appeal

[Thomas v. State](#), 3D18-2019 (Jan. 2, 2019)

Thomas alleged in a postconviction motion that the trial court, when sentencing him for a probation revocation, failed to award him credit for time previously served in prison, when Thomas did not waive credit for those years. The trial court denied the motion without attaching documents to refute the claim, and it was therefore remanded for further proceedings. Generally, a defendant “sentenced to a probationary split sentence who violates probation and is resentenced to prison is entitled to credit for all time served in prison prior to his release on probation unless such credit is waived.”

[Rodnez v. State](#), 3D18-1948 (Jan. 2, 2019)

The “two-year limitations period for filing a motion to withdraw plea for failure of the trial court to advise a defendant that the plea could result in deportation ‘commences when the judgment and sentence becomes final unless the defendant could not, with the exercise of due diligence, have ascertained within the two-year period that he or she was subject to deportation.’”

Fifth District Court of Appeal

[Strong v. State](#), 5D17-1509 (Jan. 4, 2019)

Sentences imposed for aggravated battery on a pregnant person and false imprisonment were reversed and remanded for resentencing before a different judge because the “trial judge fundamentally erred when she injected Strong’s failure to show remorse as a factor in sentencing.”

At trial, Strong denied touching the victim and claimed he was not present when the victim was injured. At sentencing, while Strong sought a downward departure for one reason, he did not seek it for the reason that the offense was committed in an unsophisticated manner and was an isolated incident for which he had shown remorse. At sentencing, he reiterated his innocence and expressed no remorse. The judge “related that it was Strong’s ‘failure to have any kind of remorse’ and his insistence on being respected both as a person and a father that caused her to conclude that a downward departure was inappropriate.”

While a lack of remorse may be considered when a defendant injects the issue or remorse when seeking mitigation, that did not occur in this case.

[State v. Butler](#), 5D17-1823 (Jan. 4, 2019)

After a jury trial resulting in a guilty verdict for first-degree murder, the trial court granted a new trial “based on the trial court’s finding that the State’s failure to disclose certain information about a witness, Brodie Hamilton, hindered Butler’s cross-examination regarding that witness’s credibility.” The State appealed and the Fifth District reversed and reinstated the verdict.

Hamilton approached the state attorney’s office seeking probation on his own pending criminal cases, offering to provide law enforcement with recorded conversations of Butler and another man regarding this crime. Investigators did not trust Hamilton, based on prior lies, but they were willing to arrange for the meeting to obtain recordings. The recordings provided the incriminating information. Ballistics evidence and surveillance video of the crime all inculpated Butler.

Hamilton did not testify at trial, and the evidence regarding the recordings came in through an investigator, who testified about Hamilton’s ten prior convictions, his pending charges, his pursuit of a deal with the State for probation on the new charges, and his lack of trust of Hamilton. “The investigator made it

clear that Hamilton’s recitation of any conversation with Butler was of no interest; it had to be a recorded conversation because the investigator did not trust Hamilton. Thus, even though he did not testify, Hamilton’s motivation and credibility were thoroughly developed at trial.”

After the verdict, but prior to sentencing, the State learned that Hamilton received \$100 from police for a bus ticket to his mother’s house and \$200 from Crime Stoppers for providing information about the crime. This was promptly disclosed and Butler argued the prior nondisclosure constituted a Brady violation.

The Fifth District disagreed. “Butler cannot identify how the previously undisclosed information would have been used to further undermine Hamilton’s credibility. Nor can we conclude that there is reason to believe that Hamilton’s credibility before the jury would have been diminished further by information that Hamilton had received three hundred dollars essentially for getting Butler’s confession on tape. That previously undisclosed evidence was only cumulative impeachment evidence which was unlikely to change the jury’s view of Hamilton’s credibility.” Hamilton’s contribution to the case was not his testimony or credibility; rather, it was obtaining Butler’s confession in a recording that was played for the jury.”

[Honor v. State](#), 5D18-3304 (Jan. 4, 2019)

In 1989, Honor, 17 years old, was convicted of first-degree murder and sentenced to life in prison with parole eligibility after 25 years. Pursuant to State v. Michel, 43 Fla. L. Weekly S298 (Fla. July 12, 2018), Honor’s claim based on Miller v. Alabama of an illegal life sentence for a juvenile was denied by the trial court, and the Fifth District affirmed. “[J]uvenile offenders sentenced to life in prison *with* the possibility of parole after twenty-five years are not entitled to resentencing under Florida’s juvenile sentencing laws,” because such a sentence “was not the equivalent of a life sentence without the possibility of parole.”