Case Law Update
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Prepared by
Richard L. Polin

Supreme Court of Florida

State v. Murray, SC17-707, et al. ((Dec. 20, 2019)

The trial court partially granted and partially denied a Rule 3.851 motion, and both parties appealed. Murray also petitioned the Supreme Court for a writ of habeas corpus. The trial court granted a new penalty phase pursuant to Hurst v. Florida, 136 S.Ct. 616 (2016).

The Supreme Court affirmed the granting of the new penalty phase under Hurst. The sentence of death became final after Ring v. Arizona, 536 U.S. 584 (2002), and Hurst was therefore applicable; and the jury's recommendation of death was by a vote of 11-1.

The Court also rejected a claim of newly discovered evidence "based on evidence that the State's witness, Anthony Smith, was coerced to testify against Murray and believed the State would reduce Smith's sentence in exchange for testifying. Murray bases this claim on statements Smith alleged in Smith's own 3.850 motion and a letter Smith wrote to the prosecutor on January 26, 2006." Murray's claim was "not based upon the recantation of testimony, but on the impeachment value of Smith's untruthful pleadings. When confronted at Murray's postconviction evidentiary hearing with his 3.850 motion and letter to the prosecutor, Smith admitted that those were not true but instead a ploy to attempt to get a sentence reduction. Smith repeatedly testified at Murray's second evidentiary hearing that Smith was truthful in his testimony at Murray's trial." The Supreme Court emphasized that Smith had been subject to other extensive impeachment at Murray's trial.

The failure to present an expert microscopist in rebuttal to the State's hair expert was not ineffective assistance of counsel. Defense counsel had consulted such an expert prior to trial and made a strategic decision not to call him as a defense expert. Defense counsel's decision was made "because the hair at issue had been consumed by DNA testing," and, instead used information from the consulted expert for the purpose of calling into question the testimony of the State's expert witness.

A 2013 review by the Department of Justice of the lab work of a state witness did not constitute newly discovered evidence. Although it could not have been discovered prior to trial, it was not of such a nature as to produce an acquittal on retrial. Murray did not establish the falsity of the testimony of the State's witness, DiZinno, when considered in its full context. While there were some erroneous or invalid statements "that exceeded the limits of science, the full context of DiZinno's trial testimony indicates that DiZinno used limiting language intended to limit his conclusions." Cross-examination of DiZinno was extensive, and, another expert, who testified for Murray at the 3.851 evidentiary hearing, testified that "the field of forensic hair analysis has not been discredited and the FBI has not continued the use of such analysis."

Counsel was not ineffective for failing to call a shoeprint expert to rebut testimony from the State's expert that one print could have come from a second individual. Prior to trial, counsel spoke to the State's expert, who said that all prints came from one individual. When the expert testified at trial as to one print possibly coming from a second shoe, defense counsel had no reason to anticipate that prior to trial, and effectively cross-examined the expert about it and moved to strike the testimony.

Appellate counsel from the direct appeal was not ineffective for failing to allege fundamental error based on the unobjected to "remaining in" language in the jury instruction for burglary. "In the present case, the record supports that Murray broke into the victim's house in order to gain entry, and not after a consensual entry. . . . There is no plausible analysis under which the jury could have concluded that the defendant entered the victim's house without criminal intent and only formed criminal intent while 'remaining in' the victim's house. As applied to the facts of Murray's case, the inclusion of the remaining in' language in the burglary instruction was mere surplusage and not fundamental error."

The trial court did not abuse its discretion in denying a cause challenge. "Although Mr. Vaccaro initially indicated that it may be true that he would be more likely to believe a police officer due to his familial relationships, upon further questioning he affirmed that he could follow the judge's instruction to evaluate witness testimony individually and not give more weight to a witness's testimony because the witness is a police officer. The trial judge noted that in observing Mr. Vaccaro, he seemed very sincere and honest in his assertion."

A claim that there was prosecutorial misconduct "based on inconsistencies in testimony of various witnesses" was without merit. "Murray has not cited one case

involving prosecutorial misconduct based upon inconsistent testimony of witnesses on retrial."

Robinson v. State, SC18-16 (Dec. 20, 2018)

The Supreme Court affirmed the denial of a successive Rule 3.851 motion. Robinson was not entitled to retroactive application of Hurst as his sentence of death became final prior to the decision of the United States Supreme Court in Ring v. Arizona, 536 U.S. 584 (2002). Even if Hurst applied, a claim regarding the right to a penalty-phase jury is procedurally barred because it could have and should have been raised on direct appeal. Robinson had waived a penalty-phase jury. That waiver was previously found to be valid and was unaffected by Hurst.

In Re: Standard Jury Instructions in Criminal Cases – Report 2018-11, SC18-1717 (December 20, 2018)

The Supreme Court authorized for publication and use amendments to five existing standard instructions:

3.13	Submitting Case to Jury
8.22	Written Threat to [Kill][Do Bodily Injury]
11.14(h)	Sexual Offender Definitions
11.15(l)	Sexual Predator Definitions
21.11	Harassing a [Witness][Victim][Informant]

Instruction 3.13 ow advises jurors to stop deliberations until a juror returns from a restroom break.

Instruction 8.22 adds new language to the title to conform to legislative amendments, adds explanatory notes, and changes language as to the three elements in the existing instruction to track statutory language from 2018 amendments.

Instructions 11.14(h) and 11.15(l) "reduce the lengthy of time for a person to qualify as living in a 'permanent residence,' 'temporary residence,' or 'transient residence' from five days to three days."

Taylor v. State, SC18-520 (Dec. 20, 2018)

The Supreme Court affirmed the denial of a successive Rule 3.851 motion.

Any error to hold a case management conference pursuant to Huff v. State, 622 So. 2d 982 (Fla. 1993), on a successive motion was harmless.

A claim of newly discovered evidence was properly denied. "We agree with the postconviction court that evidence indicating Dixon was a possible suspect in the murder of Ms. Vest was available to the defense before trial, based on Dixon's own assertion that his DNA was taken during the police investigation and he was excluded as a possible suspect. However, with regard to Holton's possible involvement in the murder, we conclude that this evidence was previously unavailable to Taylor, based on Dixon's previous unwillingness to testify."

The claim nevertheless failed because the theory that someone other than Taylor murdered Ms. Vest was cumulative to evidence already presented by the defense at trial. Trial arguments of the defense focused on forensic evidence which it was argued would eliminate Taylor as the perpetrator. "Thus, attempting to present up to three additional suspects . . . would have been cumulative and would probably not produce an acquittal on retrial."

Additionally, evidence in the trial record clearly refuted claims by Dixon in the new affidavit as to who the true perpetrator was, "thus indicating the inherent unreliability of the information contained within the affidavit." The Court went through other assertions in Dixon's affidavit and further pointed out how the evidence from the trial refuted those allegations.

Additionally, as Taylor provided a comprehensive statement of guilt to a cellmate, including details as to how the murder was committed, and an additional statement to a detective linking himself to the murder, the affidavit from Dixon for the claim of newly discovered evidence did not "present any information disputing or explaining the statements made by Taylor as to the murder."

A claim of newly discovered DNA evidence failed because it had previously been rejected, and, although a new analyst testified as to differences between her report and that of the expert produced at trial by the State, the new expert further stated that she did not disagree with the trial expert's "ultimate findings."

First District Court of Appeal

Tynes v. State, 1D18-583 (Dec. 28, 2018)

At a pretrial immunity hearing under the Stand Your Ground statute, the trial court, in November 2017, applied the burden of proof set forth in Bretherick v. State, 170 So. 3d 766 (Fla. 2015). Based on the statutory amendment from 2017, placing the burden on the State, and consistent with the First District's prior decision in Commander v. State, 246 So. 3d 1303 (Fla. 1st DCA 2018), the Court held that the amended burden of proof applied retroactively and the case was remanded to the trial court for reconsideration of the evidence based on the new burden of proof.

D'Amico v. Smith, 1D18-2165 (Dec. 28, 2018)

A postconviction habeas corpus petition which challenged the conviction was transferred from the jurisdiction in which D'Amico was in custody to the jurisdiction in which he was convicted and sentenced.

Lee v. State, 1D15-5339, 1D15-5340 (Dec. 27, 2018)

Lee appealed convictions and sentences for two counts of attempted first-degree murder and other offenses. The First District affirmed and addressed "the unpreserved argument that the trial judge departed from the role of a neutral arbiter and thereby vitiated the fairness of the trial."

During the trial, the judge commented on some of defense counsel's questions and the prosecutor's failure to object to them, and the judge also asked several questions of one state witness, "when the witness remained confused about defense counsel's questions despite several attempts at refraining them." The State's theory of the case revolved around a love triangle, resulting in these offenses.

After defense counsel questioning the girlfriend "if the driver was upset that she preferred to be with Lee because Lee could better provide for her," the judge called a sidebar, and advised defense counsel "that even though the State was not objecting, he was not going to allow counsel to continue asking the witness what was in the driver's mind." After another question from defense counsel regarding the relationship between the driver and girlfriend, the judge "told the prosecutor he was sitting like a 'bump on a log' while defense counsel was asking irrelevant questions." The judge told "defense counsel that she had elicited 'a gracious plenty'

about the victims' relationship. So she could ask a couple more questions, then move on."

On yet another occasion, the judge called for a sidebar "and more sternly chastised defense counsel for asking 'completely immaterial' questions" and "shamed the State for 'sitting on your ass yet again' and letting defense counsel do whatever she wanted."

Last, after a law enforcement witness struggled to understand questions from defense counsel, the judge asked questions to clarify a timeline.

The First District found that the judge did not depart from a neutral role because "he assisted *both sides* in clarifying issues and excluding inadmissible evidence." The judge was chastising both parties. And, "[e]ven if we interpret the judge's comments as favoring the prosecution, his actions do not rise to the level of fundamental error." The judge did not assume the role of prosecutor, "and performed appropriate management and gate-keeping functions, almost entirely at sidebar."

One judge dissented with a written opinion.

Noack v. State, 1D15-5620 (Dec. 27, 2018)

The First District reversed convictions for second-degree murder and attempted second-degree murder for a new trial based on the "erroneous admission of double-hearsay testimony." The Court also rejected a speedy trial argument.

Noack's first trial resulted in a reversal on appeal, and the State failed to start the new trial within 90 days, the time specified in Rule 3.191(m). However, Noack had previously waived his speedy trial rights and the Court concluded that the waiver was still applicable after the reversal of the first trial.

This case involved a shooting in a drug deal gone bad. Pugh, one of the other participants, testified that Smith tried to rob Noack and Pugh and Pugh struggled over a gun that Smith pulled out, and the shooting ensued, but Pugh did not know who shot Smith. The State called an investigator, Troop, who interviewed Pugh. Troop testified that "Pugh told him that Noack admitted to shooting Smith."

While Noack's statement to Pugh would be admissible as a hearsay exception – an admission – when made to Pugh, there was no exception for Pugh's statement to the investigator.

Lynch v. State, 1D16-3290 (Dec. 27, 2018)

The First District affirmed a conviction and sentence for selling crack cocaine.

The case involved an undercover operation, where officers drove through a high-crime area looking for drug sellers. One man, who identified himself as Midnight, approached and asked if they wanted to buy $50 worth of crack; the exchange was then made.

While the officers usually recorded these transactions, because Midnight approached them so suddenly, they were unable to activate the recording system, but one officer used his cell phone to take photos of Midnight. The cell phone photos resulted in the ultimate identification of Lynch.

Lynch sought to compel the State to produce forensic photos referenced during a pretrial deposition, of other individuals who identified themselves as Midnight, and which were used in the facial recognition comparison process. When that request was denied, Lynch argued, on appeal, that it constituted a Brady violation. That argument failed because Lynch could not demonstrate that the other photos resembled him or that they would support his argument that one of those individuals was the culprit. Additionally, Lynch's counsel stated that she did not want to call the forensic expert as a witness, as it would have resulted in corroboration of the officers' identification testimony. And, the jury was able to compare the cell phone photos to Lynch himself.

The Court also rejected a related argument that the identification process was unduly suggestive. Even assuming the procedure was unnecessarily suggestive, applying multiple factors, the Court concluded that there was no "substantial likelihood of irreparable misidentification." The detectives "were attentive during their interaction, even snapping photos. One of the officers testified he was certain that Lynch was the suspect, and the other testified to having seen Lynch in the area before the offense. Only about eight days passed from the drug purchase to the time officers identified Lynch as the culprit."

There was no error in revoking Lynch's right of self-representation. The trial court concluded that Lynch could not behave properly. . . . The court specifically

found that Lynch was 'unwilling to or incapable of abiding by the rules of the court ad procedure. . . .' That conclusion was supported by the record, which showed Lynch continually interrupted the judge, made outbursts, and even had to be removed from the courtroom for a short time."

And, a limited appearance in shackles and prison garb during jury selection did not warrant a new trial. "Lynch did not ask to strike the jury panel that saw him, and he accepted the jury as selected. When he raised the shackle issue, he made no further inquiry after the court apparently deferred to the sheriff's office. Counsel in this case acquiesced to proceeding without further inquiry."

DuPriest v. State, 1D16-5702 (Dec. 27, 2018)

The First District reversed the summary denial of some claims of a Rule 3.850 motion, in part, because "this case languished in the lower court for nearly twelve years" before the court ruled on the postconviction motion; and in part because the lower court appears to have originally decided to grant an evidentiary hearing, before concluding that it was not necessary.

Hicks v. State, 1D16-5876 (Dec. 27, 2018)

The First District affirmed convictions for aggravated child abuse, neglect of a child and leaving a child unattended in a motor vehicle, and reversed a conviction for child-endangerment, finding the evidence insufficient. "This count arose from events on a separate day when Hicks was with the child. The State thought it was possible that Hicks abused the child during this time because the child's mother testified that the child was injured when he left with Hicks, but the jury did not receive any evidence related to what actually happened, other than Hicks's testimony that he took the child to the beach and to McDonalds's."

Baker v. State, 1D17-1959 (Dec. 27, 2018)

In an appeal from a conviction for armed robbery, the First District held that the trial court applied the wrong standard when evaluating a motion for new trial on the ground that the verdicts were contrary to the weight of the evidence.

The judge denied the motion, stating that the denial was "'for the reasons stated on the record, as I outlined during the trial.'" As this was indicative of a ruling based on the sufficiency of evidence, as determined when denying the prior motion

for judgment of acquittal, it was erroneous, as "it failed to assess the verdicts in light of the weight and credibility of the evidence," as the court was required to do.

Boren v. State, 1D17-3361 (Dec. 27, 2018)

The trial court failed to hold a required competency hearing or enter a written order of competency.

The trial court had granted defense counsel's motion for a competency evaluation and appointed an expert. The case proceeded to trial, and the record was silent as to what happened with respect to the competency determination. The case was reversed and remanded, permitting the trial court, if possible, to make a retroactive determination of competency.

Hodges v. State, 1D17-4672 (Dec. 27, 2018)

A revocation of probation was affirmed in part and reversed in part.

A motion to dismiss for lack of jurisdiction was properly denied. There was competent evidence that Hodges "had absconded for at least a week during his probationary term" and that tolled the probationary period for the duration of the absconding.

The affidavit of violation alleged that the defendant left Nassau County, his county of residence, without consent of the probation officer, by entering Duval County of March 8, 2017; no evidence was presented as to that date. A violation for changing residence without consent of the officer was demonstrated solely by hearsay evidence, and that a violation, if based on hearsay, must also have some nonhearsay evidence to support it. The defendant's mother testified at the hearing, denying that he changed residence, conceding that he "had been absent from the residence for a week and that she did not know his whereabouts at that time." An absence for a brief time "during which the probationer's location was unknown would not support a finding that the probationer violated a condition of probation by changing his residence without first procuring the consent of his probation officer."

While there was also sufficient evidence of a new law violation for a substantive offense, because the judge's oral findings, coupled with a lack of written findings, left it unclear whether the judge would have revoked based solely on the new law violation, the case was reversed and remanded with directions to render a

written order and make a determination as to whether probation would still be revoked based on the remaining violations.

Second District Court of Appeal

Newton v. State, 2D16-3559 (Dec. 28, 2018)

The trial court must give a defendant notice of the right to a hearing to contest the $100 fee for services of court-appointed conflict counsel when pronouncing its imposition at sentencing. The Second District decision was based on its own prior decisions to the same effect, and conflict was certified with the First District's decision in Mills v. State, 177 So. 3d 984 (Fla. 1st DCA 2015) (en banc). And, a trial court within the geographic territory of an appellate court that has decided the issue is bound to follow the district court of appeal for that location.

Penton v. State, 2D17-3765 (Dec. 28, 2018)

The summary denial of two claims of a 3.850 motion was reversed for further consideration of the claims.

One of the claims alleged ineffective assistance of counsel by advising the defendant not to testify. Penton alleged that his own testimony "was necessary to refute the detective's testimony that he had prior knowledge of the robbery." Penton further alleged that counsel advised him that if he testified, the State would be able to inquire into 'every detail' of Penton's criminal history on cross-examination." This allegation regarding the scope of potential cross-examination by the State sufficed to show deficient performance by counsel. As to prejudice, Penton further alleged that he would have testified about several points that would have helped his case. The Second District reviewed the trial court's analysis in which the trial court compared Penton's allegations to his trial testimony, and the Second District disagreed with the trial court's evaluation.

In the other claim, Penton alleged counsel was ineffective for failing to interview and call two individuals as witnesses. The trial court concluded that it was unreasonable to believe that those individuals "would have implicated themselves in committing an armed robbery and subjected themselves to conviction as codefendants." The trial court also questioned their credibility in light of Penton's statements to law enforcement. Notwithstanding the trial court's evaluation, Penton stated a facially sufficient claim and it was not conclusively refuted by the limited

record before the Second District. The Second District further disagreed with the trial court's take on whether a reasonable jury would have accepted the testimony.

Cruz v. State, 2D17-4284 (Dec. 28, 2018)

The Second District reversed and remanded the summary denial of one claim of a 3.850 motion for further proceedings.

The claim at issue was for ineffective assistance of counsel for failing to object "when the State's DNA expert . . . testified regarding the statistical analysis of a DNA match for a profile she developed from evidence taken from the crime scene." Cruz alleged the DNA evidence was "the primary basis for identifying him" as a perpetrator. Defense counsel was alleged to have made a premature objection, before the State laid the predicate for the testimony, and afterwards, Cruz alleged that the State failed to demonstrate her qualifications as to the statistical component of DNA. "More specifically, the State never elicited testimony from Ms. Ragsdale to demonstrate that she had sufficient knowledge of the DNA database or what formula was used to perform the statistical analysis." The trial court's denial was based on the fact that defense counsel did object, at the prior occasion, and that the witness then testified that "statistical analysis is commonly done and that she has been conducting such analysis since 1996."

The trial court's reliance on the quote as to common analysis and her own experience with it since 1996 was not sufficient, in and of itself, to lay the proper predicate. That would require testimony about "knowledge of the population database from which the statistics were generated or that she identified the method she used to perform the statistical analysis."

On remand, the court must rely upon additional record attachments to conclusively refute the claim, or otherwise provide an evidentiary hearing.

Jefferson v. State, 2D18-3646 (Dec. 28, 2018)

The Second District granted a writ petition based on Stand Your Ground immunity. The trial court denied the lower court motion, holding that the "mere claim of entitlement to immunity in a motion to dismiss was insufficient to trigger the State's burden to overcome the claim by clear and convincing evidence." The trial court ruled that the defense must first present "evidence sufficient to raise a prima facie claim. The Second District held that the trial court employed incorrect procedures.

Section 776.032(4) "requires the trial court to first determine the facial sufficiency of a petitioner's motion to dismiss asserting a claim for Stand Your Ground immunity, and, if it finds the motion facially sufficient, to then conduct an evidentiary hearing where the State will have the burden of proof to overcome the petitioner's claim by clear and convincing evidence."

The trial court motion alleged that the defendant and his roommate, the deceased, often had alcohol induced arguments, that the deceased regularly armed himself with a bat and threatened to kill Jefferson, and that, as a result, Jefferson kept a knife on his bedside table. Jefferson awoke to find the roommate's hand in his pants pocket, where he kept his money. A fight then ensued, in which they both reached for the knife, and during a multi-room struggle, which ended up in the backyard, the two lost their balance, and, while falling to the ground, Jefferson got control of the knife and stabbed his roommate.

The motion further alleged that the State would not be able to sustain its burden under the statute because a surveillance tape did not show anything related to the issue of self-defense and there were no other witnesses. Thus, the motion alleged all the State could prove was that the roommate was dead and Jefferson killed him.

The State's trial court response to the motion contested Jefferson's credibility and argued that Jefferson had to testify under oath subject to cross-examination. The trial court's order concluded that the defense "is required to present evidence prior to the State at a hearing for immunity. The State carries no burden at a pre-trial hearing for immunity until the defense presents evidence subject to cross examination that establishes a prima facie claim. The evidence must be in the form of testimony or physical evidence and must be subject to cross examination by the [S]tate in order to establish that a claim for immunity is valid. A written motion on its face is legally insufficient to raise a prima facie claim for immunity."

The Second District first addressed an issue regarding appellate review. Prohibition "is the proper remedy when the appellate court determines on the merits that the defendant is entitled to immunity under the Stand Your Ground law, the reason being that the lower court has no authority to proceed against an immunized defendant." Where, as in this case, it was only the procedure that was being challenged, certiorari was the proper remedy; the Court treated the prohibition petition as a certiorari petition.

The Second District then agreed with the petitioner "that the trial court erred by imposing an evidentiary burden on petitioner to establish a 'prima facie claim' of self-defense in order to trigger the State's burden to 'overcome' this claim 'by clear and convincing evidence,' as it contravenes the plain and ordinary meaning of the text of section 776.032(4)." The trial court should have looked solely to the facial sufficiency of the claim as set forth in the motion. Section 776.032(4) "plainly states that there is no evidentiary burden upon the person seeking Stand Your Ground immunity."

Upon the filing of a motion to dismiss claiming immunity, the "trial court is then to determine whether, at first glance and assuming all facts as true, the alleged facts set forth in the motion support the elements of self-defense in either section 776.012, 776.013,or 776.031. If the trial court determines that the defendant's claim of self-defense satisfies the requirements set forth in the applicable self-defense statute raised by the accused, the State shall then present clear and convincing evidence to overcome the self-defense claim." The Second District quashed the trial court's order, but did not express any opinion as to the facial sufficiency of the petitioner's claim, which was for the trial court to evaluate in the first instance.

Third District Court of Appeal

Losada v. State, 3D16-1758 (Dec. 26, 2018)

In an appeal from a conviction and sentence, the Third District agreed with Losada that the trial court "erred by (1) failing to make an independent determination of Losada's competency to stand trial at his competency hearing and (2) failing to apply the correct legal standard in determining that Losada was not competent to waive his Sixth Amendment right to counsel."

Losada was simultaneously being prosecuted for cases in Miami-Dade and Palm Beach Counties. After competency was found to be restored in the Palm Beach case, where Losada was found guilty, he was transferred to Miami, where two psychologists were appointed to evaluate competency to proceed to trial and waive counsel. Both found him competent to stand trial, and at a pretrial hearing, defense counsel stipulated to the reports. The trial court the found Losada competent to stand trial. There was no written order and not indication that the court reviewed the reports.

At the same hearing, Losada requested to waive counsel and represent himself. At times Losada spoke about waiving standby counsel and expressed a lack

of clear understanding as to what the court meant when it inquired if he intended to represent himself. When asked if he wanted the court to appoint another lawyer, Losada said "no."

The court reserved ruling and later denied the request for self-representation finding that "(1) Losada suffered from 'severe mental illness'; (2) Losada's waiver was not unequivocal due to 'wildly bizarre' 'answers to straightforward questions' during he hearing; and (3) the Sixth Amendment does not guarantee self-representation to a defendant who 'refuses to defend himself.'" As evidence of severe mental illness, the court references Losada's "'bizarre or self-destructive behavior,' e.g., refusing to eat, to communicate with staff, or to take his medications, and being placed on suicide watch, throughout the proceedings of the Palm Beach trial."

A determination of competency to stand trial can not be based solely upon the parties' stipulation. The court must make its own independent determination. There was no record of that being done here. The Third District further found that while retroactive competency evaluations are often authorized, that result would not apply here because the competency hearing "was not contemporaneous with the trial." The trial court had reserved ruling in December 2013, 2 ½ years before the trial, and five years prior to the issuance of the appellate court opinion.

As to the lower court's reliance on indicia of bizarre behavior in Palm Beach as the basis for denying self-representation, the Third District observed that the two psychologists who did the Miami evaluations were unaware of any such behavioral difficulties.

The Faretta inquiry regarding self-representation considers, among other factors, "'defendant's age, mental status, and lack of knowledge and experience in criminal proceedings,'" and the defendant must be made aware of the dangers and disadvantages of self-representation. The court must find a knowing and intelligent waiver of the constitutional right to counsel. The waiver of counsel may be denied for those who, though competent to stand trial, still suffer from "severe mental illness." Here, there was no substantial, competent evidence of severe mental illness. Neither of the Miami psychologists found any mental illness at all, let alone severe, and the bizarre and self-destructive behavior noted by the judge did not rise to the level of severe mental illness.

The Third District further found that Losada's waiver was unequivocal based on statements including: "I will take actions and decisions on my behalf"; "I am not

going to be represented by an attorney"; "I rather not have an attorney"; among others.

Junior v. LaCroix, 3D17-452 (Dec. 27, 2018)

Miami-Dade County Corrections Department appealed a trial court writ of habeas corpus ordering the release of LaCroix, although LaCroix was subject to a federal immigration detainer. The trial court also "declared Miami-Dade County's policy toward federal immigration detainers to be unconstitutional under the Tenth Amendment of the United States Constitution."

The Third District found that "the trial court lacked jurisdiction to adjudicate the constitutionality of the subject federal immigration detainer" and reversed and quashed the writ.

LaCroix's petition alleged that the Department failed to release him from jail at the expiration of his sentence. By the time the trial court issued the writ, LaCroix was no longer in the Department's custody.

The Miami-Dade policy at issue derived from a County Commission Resolution, "which directed the County Mayor to implement a policy whereby Department would not honor a federal immigration detainer request unless: (i) the federal government agreed to reimburse Miami-Dade County for all expenses related to the detainer request, and (ii) the inmate had either a conviction for a forcible felony or a pending charge of a non-bondable offense." Due to disagreements between the county and federal governments, the county "ended its cooperation on federal immigration detainer requests." In 2017, the County reverted to its pre-2013 policy of cooperation on detainer requests "so long as the federal government showed probable cause for the detainer," and the County further authorized legal challenges if the federal government "denied grant funding due to Miami-Dade County's policy on federal immigration detainer requests."

The trial court's writ was based on the tenth amendment, finding that "because the federal government has exclusive dominion over immigration and deportation, Department cannot be 'commandeered' to perform the federal function of detaining prisoners for deportation purposes."

The Third District held "that a State trial court lacks jurisdiction to adjudicate the validity of a federal immigration detainer."

Fifth District Court of Appeal

Sonneman v. State, 5D17-2344 (Dec. 28, 2018)

On appeal from convictions for two counts of lewd or lascivious battery of a child and interfering with the custody of a child, the Fifth District affirmed and found that the trial court did not err in denying a motion for a post-verdict interview of a juror whom the defense argued committed "misconduct by not disclosing that she had been sexually abused as a teenager." The motion was based on Facebook posts, which also revealed the juror held the defendant's decision to not testify against him.

The trial court conducted an evidentiary hearing and the defendant argued both the concealment of the status as a victim of sexual abuse, and the consideration of the defendant not testifying.

The consideration of the decision to not testify inheres in the verdict itself and cannot serve as the basis for a juror interview. As to the nondisclosure of personal experience with sexual assault the Fifth District reviewed the questions asked by defense counsel and the prosecutor during voir dire and found that neither "asked the panel if any of them had personally been sexually assaulted, nor was the panel asked if any among them was a victim of any crime at all."

Thus, there was no abuse of discretion in denying the motion for a post-verdict juror interview.

Clark v. State, 5D17-3133 (Dec. 28, 2018)

The trial court abused its discretion in denying a request by the defendant for self-representation.

A few days prior to trial, the judge conducted a Faretta inquiry and denied the request, concluding "that Appellant was making a poor decision . . . on the basis that Appellant was lacking insight and capacity to make a proper, informed, constitutionally-permitted decision." On the second-day of trial, another inquiry was conducted when the defendant asserted that he would not participate in the trial with appointed counsel. The second judge, after the inquiry, found "that he was not competent to make the decision as to whether it was appropriate to be represented by counsel or not." Clark then left the courtroom and the trial proceeded without him.

"Appellant's testimony at both *Faretta* hearings made it clear that he was literate, competent, and was not suffering from any mental, physical, or substance-related infirmity. While he testified that he did not understand everything that was being said, Appellant said that he understood the advantages of being represented and the disadvantages of being unrepresented. . . . Neither judge's finding that Appellant was incompetent to make the decision to represent himself was supported by competent, substantial evidence."

Smith v. State, 5D18-2399 (Dec. 28, 2018)

A life sentence for aggravated battery with a firearm was illegal because it exceeded the statutory maximum for the offense. The verdict found that the defendant caused death or great bodily harm by discharging a firearm. The defendant was sentenced to life in prison with a 25-year mandatory minimum for the discharge of a firearm.

The mandatory minimum range was 25 years to life, but the court imposed only the 25 year mandatory minimum. "Thus, the non-mandatory life portion of his sentence is illegal because it exceeds the statutory maximum of 15 years for a second-degree felony."

Parker v. State, 5D17-3446 (Dec. 31, 2018)

Parker pled no contest to possession of ammunition by a convicted felon. He appealed the denial of a motion to dismiss which alleged that "section 790.23(2)(a), Florida Statutes (2017), unconstitutionally infringed on the executive branch's authority to restore civil rights." The Fifth District disagreed and affirmed.

After a 1987 conviction, Parker's civil rights were restored one year later "except the specific authority to possess or own a firearm." In 2017 he as charged with possession of ammunition by a convicted felon.

"The authority to restore civil rights belongs solely to the executive branch and cannot be infringed upon by the legislative or judicial branches. . . . Moreover, the executive branch's authority to restore an individual's civil rights is discretionary. . . . thus, it is within the executive branch's discretionary authority to grant a full or partial restoration of civil rights, and an individual is not constitutionally deprived by receiving only a partial restoration of his or her civil rights." As Parker was not granted the right to possess a firearm when his civil rights were partially restored, he was not granted the right to possess ammunition.