Case Law Update
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Supreme Court of the United States

United States v. Davis, 18-431 (Jun 24, 2019)

18 U.S.C. s. 924(c) provides "heightened criminal penalties for using or carrying a firearm 'during and in relation to,' or possessing a firearm 'in furtherance of,' any federal 'crime of violence or drug trafficking crime." Davis and Glover were convicted for multiple robberies under the Hobbs Act. Davis was found guilty of all but one of those, and was also guilty of being a felony in possession. He received sentences of 70 years for those offenses.

Section 924(c) provides additional mandatory minimum sentences. Under it, a crime of violence is "an offense that is a felony" and "(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

The government argued that Davis and Glover qualified under the residual clause of 924(c) "by brandishing a short-barred shotgun in connection with their crimes." The jury made the necessary finding and the district court imposed the mandatory minimum.

Davis argued that s. 924(c) was unconstitutionally vague and the Supreme Court agreed, resolving a dispute among the federal circuits. The Court found that the meaning of the word "offense" in "B", quoted above, was vague.

In prior decisions finding similar statutory provisions vague, the Court relied on the "categorical approach," under which the manner in which the defendant actually committed the offense was disregarded, and the judges "were required to imagine the idealized '"ordinary case"' of the defendant's crime and then guess whether a '"serious potential risk of physical injury to another"' would attend its commission." The same unpredictability existed with the language at issue in 924(c).

United States v. Haymond, 17-1672 (June 26, 2019)

Haymond was convicted of possessing child pornography. The sentencing statutes provided the court with authority to impose a term of prison between 0 and 10 years under 18 U.S.C. s. 2252(b)(2), and a period of supervised release ranging from five years to life, under s. 3583(k). The court sentenced him to 38 months in prison, followed by 10 years of supervised release.

The court subsequently revoked the supervised release based upon a finding that it was more likely than not that Haymond knowingly downloaded and possessed 13 images of child pornography. One of the applicable sentencing statutes at this stage, 18 U.S.C. s. 33583(e), permitted the imposition of a prison term up to the maximum period of supervised release authorized by the original sentencing statute. That would have enabled the court to impose a prison term of up to 10 years.

However, another statutory provision, s. 3583(k), provided that "if a judge finds by a preponderance of the evidence that a defendant on supervised release committed one of several enumerated offenses, including the possession of child pornography, the judge *must* impose an additional prison term of at lest five years and up to life without regard to the length of the prison term authorized for the defendant's initial crime of conviction."

The sentencing court, based this provision, felt bound to impose at least five years in prison, but expressed reservations. The court was revoking probation based upon the preponderance of the evidence. As the jury had already found the defendant guilty of the charged offense, imposing a sentence within the range available at the original sentencing was not problematic. However, the sentencing court was troubled by the additional mandatory five years when based only on the court's revocation of supervised release by a preponderance of the evidence.

An opinion by Justice Gorsuch, joined by three other justices, constituted the judgment of the Court and found that s. 3583(k)'s mandatory minimum in this case violated Haymond's right to a trial by jury. One justice concurred in the judgement with a separate opinion and four justices dissented.

Mitchell v. Wisconsin, 18-6210 (June 27, 2019)

In previous decisions, the Supreme Court addressed the administration of blood alcohol concentration tests without a warrant upheld two courses of conduct: "First, an officer may conduct a BAC test if the facts of a particular case bring it

within the exigent-circumstances exception to the Fourth Amendment's general requirement of a warrant. Second, if an officer has probable cause to arrest a motorist for drunk driving, the officer may conduct a breath test (but not a blood test) under the rule allowing warrantless searches of a person incident to arrest."

This case considered "what police officers may do in a narrow but important category of cases: those in which the driver is unconscious and therefore cannot be given a breath test. In such cases, we hold, the exigent circumstances rule almost always permits a blood test without a warrant. When a breath test is impossible, enforcement of the drunk-driving laws depends upon the administration of a blood test. And when a police officer encounters an unconscious driver, it is very likely that the driver would be taken to an emergency room and that his blood would be drawn for diagnostic purposes even if the police were not seeking BAC information."

The opinion was authored by Justice Alito and joined by three other justices. One other justice concurred in the judgment with a separate opinion and four justices dissented.

Eleventh Circuit Court of Appeals

United States v. Lewis, 17-14571 (June 26, 2019)

Lewis entered into a plea bargain and waived his right to appeal his sentence, subject to certain inapplicable limited circumstances. After the guilty plea, he then ignored the waiver of the right to appeal and appealed his 30-month sentence. He tried to circumvent the waiver by arguing that the government joined in his objection to the sentence on the ground that it was unreasonable. He called this a "waiver by the government of its right to enforce his appeal waiver." The Eleventh Circuit disagreed and dismissed the appeal.

The Court noted that if it adopted Lewis' position, in future cases, the government would know that if it joined a defendant's objection to a sentence in excess of the government's recommendation under a plea, the government would lose its right to enforce the appeal waiver. This, in turn, would deter the government from joining a defendant's objection to a sentence in excess of the recommended sentence.

Raulerson v. Warden, 14-14038 (June 28, 2019)

Raulerson was convicted for murdering two teenagers and one woman whom he robbed the next day. He received two death sentences. He appealed the denial of a federal habeas corpus petition. His defense at trial was "guilty but mentally retarded" and thus ineligible for the death penalty. In the federal habeas petition he argued that counsel was ineffective for failing to investigate and present mitigating evidence in the penalty phase; that the "Georgia requirement that a criminal defendant prove his intellectual disability beyond a reasonable doubt violates the Due Process Clause"; and "that he is actually innocent of the death penalty because he is intellectually disabled." The Eleventh Circuit rejected those arguments because the Georgia court "reasonably determined that the first two claims fail and because Raulerson fails to establish his intellectual disability."

As to counsel's alleged failure to adequately investigate mitigation, "counsel gleaned a portrait of his life from the expert reports, family interviews, and medical, school, and criminal records." While Raulerson produced affidavits from more family members, teachers and others, "that more investigation could have been performed does not mean his counsel's investigation was inadequate." Additionally, counsel were not deficient for relying solely on mitigation presented during the guilt phase where it "included descriptions of Raulerson's intellectual deficiencies and life history." One expert testified extensively at the guilt phase regarding these matters, as Raulerson relied on a mental health defense.

The state court determination that the Georgia burden of proof for intellectual disability did not violate due process was not an unreasonable application of clearly established federal law. Georgia required that Raulerson "prove his intellectual disability beyond a reasonable doubt." Raulerson's argument was based on Atkins v. Virginia, 536 U.S. 304 (2002) and Cooper v. Oklahoma, 517 U.S. 348 (1996). Atkins made no reference to the burden of proof and deferred to the states to develop appropriate ways to identify intellectual disability. Cooper addressed a heightened burden for defendants to prove incompetency to stand trial, and did not address the right not to be executed if intellectually disabled.

Finally, Raulerson did not prove his intellectual disability by clear and convincing evidence. Several IQ scores ranging from 78 to 83 refuted a claim of subaverage intellectual functioning. Taking into account the standard error of measurement, while the range put Raulerson closer to intellectual disability, the range works bi-directionally, and was therefore also consistent with a higher end IQ of 89.

As this case was a federal habeas proceeding, all issues were decided on the basis of the highly deferential standards of review that apply towards state court decisions. Those standards receive extensive discussion by the Court. None of the issues were reviewed de novo by the appellate court.

One judge dissented with respect to the burden of proof, finding that Georgia's requirement that a defendant prove the disability beyond a reasonable doubt "creates an intolerable risk that intellectually disabled defendants will be put to death."

First District Court of Appeal

Rosier v. State, 1D16-2327 (June 28, 2019) (on motion for rehearing)

Rosier argued on appeal that the trial court failed to conduct a required competency hearing. After the filing of the Initial Brief of Appellant, the State obtained and supplemented the record on appeal with the transcript of the competency hearing that was actually held and argued that Rosier did not challenge the adequacy of the hearing that was actually held. Rosier subsequently argued that the issue was not waived, because the adequacy of the hearing was addressed in the State's brief. The First District disagreed and found that issue waived. One judge dissented.

Turner v. State, 1D17-3244 (June 28, 2019)

Turner argued on appeal that the jury's verdict of guilty for one count of second-degree murder and seven counts of attempted second-degree murder was a true inconsistent verdict. The First District held that while the jury verdict was factually inconsistent, it was not a true inconsistent verdict, as there was no negation by the jury of any necessary element of the offenses for which Turner was found guilty.

For all of the above offenses, the jury made an express finding that Turner did not actually possess a firearm during the commission of the offenses. This was clearly inconsistent with the testimony, because "the jury had no evidence to support a finding of guilt against Appellant unless Appellant possessed and discharged a handgun at the assembled group."

The concept of a truly inconsistent verdict, which would require reversal, is based on verdicts which are "legally interlocking." The charges of second-degree

murder and attempted second-degree murder were not legally interlocking. Neither of them included a statutory element of possession of a firearm.

Morris v. State, 1D18-418 (June 28, 2019)

The First District affirmed the summary denial of a Rule 3.850 motion and addressed multiple claims.

An evidentiary hearing on a claim of newly discovered evidence based on an alleged recantation of a witness was not required: "Here, even if the court accepted the recantation as true, such recantation could only potentially affect the daughter's testimony regarding what behavior she observed in the victim. The purported recantation would not eliminate or diminish in any way the testimony from the victim that Appellant continually sexually abused her beginning when she was six or seven until she was eighteen."

Morris also claimed that counsel was ineffective for failing to present multiple witnesses who would have testified that "they were around Appellant in the time period that the offenses allegedly occurred and never saw any improper behavior by Appellant towards the victim." As the testimony at trial was that the abuse occurred when Morris was alone with the victim, these other witnesses could not be deemed to have the probability of affecting the outcome of the trial.

Keith v. State, 1D18-1494 (June 28, 2019)

A claim that a cause challenge by the State was improperly granted was not preserved for appellate review where the objection was not renewed before the jury was sworn.

State v. Harvey, 1D18-1606 (June 28, 2019)

The State's challenge to a downward departure sentence based upon the lack or oral or written findings to support the departure was not preserved for appellate review. "'The State must call the court's attention to the need for downward departure reasons with a proper objection.'"

Cole v. State, 1D18-1689 (June 28, 2019)

Dual convictions for possession of methamphetamine and the possession of the same meth, with intent to sell it, within 1,000 feet of a single prescribed location,

did not constitute a double jeopardy violation. The opinion does not set forth any facts.

Gary v. State, 1D18-3544 (June 28, 2019)

Gary filed a Rule 3.800(a) motion to correct illegal sentencing, arguing that the evidence of his predicate out-of-state convictions consisted of hearsay. The First District held that this was a challenge to the "procedure" by which the sentence was imposed and was not a cognizable claim under Rule 3.800(a).

Second District Court of Appeal

Rioux v. State, 2D17-4042 (June 28, 2019)

Sentences for two second-degree felonies, which have 15-year maximum sentences, were reversed as exceeding the maximum, where 15 years of prison was followed by probation for life.

Taylor v. State, 2D18-5958 (June 28, 2019)

A contempt conviction was reversed due to insufficient evidence. While the appellate court believed that the trial court believed it heard what formed the basis for the contempt, the appellate court listened to the recording of the proceeding and concluded that it was not Taylor who said what had been said.

Bailey v. State, 2D17-23 (June 26, 2019) (on motion for rehearing)

Bailey received a life sentence for a first-degree murder committed while he was a juvenile. After Miller v. Alabama and related Florida Supreme Court opinions, he received a new sentencing hearing under the 2014 juvenile sentencing statutes. The court then concluded that a sentence of life was not appropriate and imposed a sentence of 50 years, with judicial review after 25 years, and a 20-year mandatory minimum sentence for discharging a firearm.

Bailey's sentence was imposed pursuant to the statutory provision authorizing a 40-year minimum term of imprisonment, with judicial review after 25 years. He argued that this enhancement was not charged in the indictment and was not found by the jury. The statutory provision applies to a "person who actually killed, intended to kill, or attempted to kill the victim." Although the provision did not exist at the time of the offense or indictment, the legislature provided that it applied

retroactively. And, the indictment alleged premeditation, which was a necessary component of the jury's verdict and which satisfied the intent requirement of the statute.

The Court also rejected Bailey's argument that the 40-year provision was unconstitutional because it took away the discretion of the trial court and required the trial court to impose a certain sentence without the individualized sentencing for juveniles required by the United States Supreme Court. The Supreme Court's decisions, however, dealt with mandatory sentences of life in prison without the possibility of parole.

The juvenile sentencing statute further requires, after the court determines that the defendant killed, intended to kill or attempted to kill, that the court consider multiple factors relevant to the defendant. The Second District observed that Miller does not require that the sentencing court make certain findings. And, the appellate court noted that the trial court did indicate that it was taking the factors into consideration, specifically referencing two of them before finding the sentence of life to be inappropriate.

J.A.H. v. State, 2D17-4027 (June 26, 2019)

The trial court erred in denying a motion for judgment of acquittal as to one count of theft of a motor vehicle and three counts of burglary.

As to the motor vehicle theft, the evidence was that officers observed five individuals, including J.A.H., fleeing from the vehicle which was known to have been stolen, and J.A.H. admitted to knowing that it was stolen. There was no evidence linking him to the theft, however.

As to the burglaries, wallets and other items belonging to owners of other burglarized vehicles identified those items as belonging to them. Again, there was no evidence linking J.A.H. to the burglaries of those other vehicles. Video evidence of one of the burglaries showed five perpetrators, but J.A.H. could not be identified from it.

Third District Court of Appeal

Edwards v. State, 3D17-734 (June 26, 2019)

The Third District affirmed convictions for official misconduct and found that the trial court did not err in denying a motion to suppress "evidence obtained from a personal flash drive plugged into [the appellant's] work computer."

The evidence against Edwards, a police officer, was that she falsified police reports for the purpose of getting her husband fired from his job. Someone called her husband's employer regarding an investigation against her husband and emailed the falsified reports to the employer. Other police officers observed Edwards in the vicinity of copy machine, in the police department, from which the reports were emailed, near the time of the emailing. Edwards claimed she could not have been at the police department at that time because she left work earlier, not feeling well, having gone to a physical therapist and then to pick up her daughter from school, all surrounding the time when the email was sent.

Edwards argued that the flash drive attached to her computer was personal property; the trial court found that she did not have a reasonable expectation of privacy in it.

Internal affairs officers seized the flash drive as it was attached to the work computer and department protocol provided that anything attached to the computer is part of the "computer system." The login banner to the computer, part of the County system, contained an explicit warning that users have no explicit or implicit expectation of privacy. This also included consent on the part of the user to interception, monitoring, recording, etc. Edwards was sent out of the office on an errand to allow for the removal of the flash drive during her absence. Additionally, it was noted that Edwards' computer was kept in an office Edwards shared with a second officer, and that officer had access to Edwards' computer password and permission to access it.

Alfonso v. State, 3D17-2617 (June 26, 2019)

The trial court did not err in denying a motion to suppress the identification made by the "sole witness who observed [the defendant] breaking into her home." Police apprehended the defendant in the backyard, shortly after the witness heard someone trying to break into her home and she observed the perpetrator through a

window and peephole, initially at a distance of 15 feet away, subsequently from three feet. Venetian blinds were pulled down, but the slats were open.

The police conducted a show-up identification with the defendant on the street, and the witness doing an identification from inside her kitchen. This was less than 20 minutes after the witness saw and heard someone trying to break in. She identified the defendant immediately.

The Third District noted that show-up identifications are inherently suggestive. The Court analyzed the multiple factors which are assessed when identifications are unduly suggestive to determine whether a substantial likelihood of misidentification existed. Those factors weighed in favor of denying suppression.

The witness had sufficient time to observe the perpetrator – 20-30 seconds. The witness had a high degree of attention, both while viewing the person through the window and also through a peephole in the door.

Although there was no "prior description" of the perpetrator by the witness, the trial court found her credible when "she described the defendant as she saw him through the peephole and when she recalled his appearance while breaking the window."

She also demonstrated a high level of confidence during the confrontation. Lastly, the time between the break-in and show up was minimal and weighed against likely misidentification.

Garcia v. State, 3D19-60 (June 26, 2019)

Garcia appealed a conviction for violating an injunction for protection against stalking. He argued that he could not be convicted with respect to the initial temporary ex parte injunction because his conduct occurred after it expired it, and that he could not be convicted as to the permanent injunction entered after notice and hearing, because he did not attend the hearing and did not receive a copy of the injunction.

The Third District disagreed. The temporary injunction contained a warning that if a final judgment of injunction was entered, the temporary injunction does not expire until the final judgment is served on the respondent. The incident at issue occurred during this gap period.

Fourth District Court of Appeal

Hegele v. State, 4D18-835 (June 26, 2019)

Hegele appealed a conviction for reckless driving causing serious bodily injury. He argued that the trial court erred in instructing the jury "that law enforcement officers are not relieved from the duty to drive with 'due regard' for the safety of all persons."

Hegele was on duty at the time of the crash, in a marked car. He was on the lookout for a vehicle suspected of involvement in a felony in another jurisdiction. He was driving in excess of more than 100 miles per hour, more than twice the posted speed limit, "with no lights or siren, in the middle of the day, on a major roadway . . . after his supervisors had given orders to 'hang back' and 'break it off.'"

In closing argument, defense counsel asserted that the defendant was just doing his job. The State argued that this opened the door for the requested special instruction. After arguments about the scope and language of the instruction, and revisions to initial proposals, the court granted the State's request for the instruction.

The Fourth District found that there was no abuse of discretion. The instruction was relevant to testimony in the case, both in terms of the manner in which the defendant was driving and the requirement that emergency vehicles drive so as not to endanger others or themselves.

Franklin v. State, 4D18-1401 (June 26, 2019)

Franklin appealed multiple convictions for leaving the scene of an accident and related offenses. Franklin led police on a chase after they tried to stop his vehicle, before he crashed and fled, ultimately being stopped when tased. His defense was one of duress – that a passenger in the vehicle compelled him to flee at gunpoint. The State's theory was that he fled because he was on probation and did not want to be caught.

Element six of the standard instruction on duress provides that "the harm that the defendant avoided must outweigh the harm caused by committing the [charged offense]." The standard instruction also provides that the defense of duress "should be considered for each of these charged crimes independently."

Franklin argued that although element six was part of the standard instruction, it was not an accurate statement of the law. The issue was not preserved and Franklin affirmatively agreed to the entire instruction, with the addition of one sentence added at his request.

Although the claim was waived, the Fourth District addressed it in the alternative. The Court reviewed relevant case law and found that it was "unclear as to whether one can definitively say that the 'choice of evils' concept that is now element 6 of instruction 3.6(k) derives from what is considered to be 'the common law.' In any case, we are unaware of challenge to the inclusion of element 6 in the jury instruction for duress during the more than two decades of history on that instruction."

State v. Parker, 4D18-3112 (June 26, 2019)

The Fourth District reversed an order suppressing evidence. In a 35-year old first-degree murder case with a lengthy post-conviction history, Parker received a new penalty phase in 2017. The State announced that it did not intend to use the statements at issue unless Parker opened the door. Parker still wanted a ruling on their admissibility because his decision of whether to testify "derived from the inadmissible statements." Some statements had been held inadmissible in earlier appellate litigation. The State disputed the inadmissibility of one statement. The trial court concluded that statement was also inadmissible based on a prior decision of the Florida Supreme Court in this case.

The Fourth District agreed with the State that the law of the case doctrine was inapplicable: The issue in the prior Florida Supreme Court case was whether "counsel was deficient in stipulating to the admission of hearsay and whether the defendant was prejudiced thereby." The Supreme Court's decision was based on a stipulation, not on an evidentiary hearing regarding the circumstances surrounding the statement. "If the facts upon which the supreme court's prior conclusions were made are no longer the facts of the case, then the doctrine [law of the case] does not apply."

Robinson v. State, 4D19-652 (June 26, 2019)

In a Rule 3.800(a) motion, Robinson challenged his habitual offender sentence. He argued that the court erred in "treating a prior withhold of adjudication, for which the defendant did not also receive the legally-required probation or

community control, as his HFO-qualifying prior conviction." The Fourth District disagreed.

The prior qualifying offense is referred to in the HFO statute as a "conviction." "Conviction" is further defined in the HFO statute: "the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction."

The earlier sentence, which withheld adjudication but suspended sentence was an illegal sentence because a withhold of adjudication must be accompanied by probation or community control. The Fourth District held that the withheld adjudication could be used as the prior conviction even when not accompanied by probation or community control. It was presumed that the legislature did not contemplate a withhold of adjudication without probation or community control. The defendant already derived a benefit to which he was not entitled – withheld adjudication without probation or community control. The Fourth District would not permit that unwarranted benefit to be parlayed into a further benefit by disqualifying the withhold of adjudication as the predicate.

Fifth District Court of Appeal

Riordan v. State, 5D17-2956 (June 28, 2019)

The Florida Supreme Court previously held that section 775.082(10) was unconstitutional because it required the judge to make findings as to dangerousness to the public in order to justify a sentence other than a non-state prison sanction based on the defendant's point total. That decision required reversal here.

The Fifth District further found that the lower court's finding would have been insufficient regardless. Riordan was found guilty of battery and the jury further found that he had committed a prior battery, upgrading the conviction from a misdemeanor to a felony. His resulting CPC score was 21.3 points, just under the maximum of 22 required for a non-prison sanction under section 775.082(10).

Here, the trial court's findings were based on the defendant's prior record, which the court deemed to be escalating. Although most of the priors were non-violent, the lower court observed that harm to the public could be based on economic and other forms of harm. There was no evidentiary support, however, for any such other form of harm.

Santos v. State, 5D18-1318 (June 28, 2019)

The trial court did not err in denying a motion to withdraw plea which argued that the plea was involuntary due to misadvice of counsel.

Gomez v. State, 5D18-2903 (June 28, 2019)

Gomez appealed a conviction for attempted second-degree murder. He argued that the trial court committed fundamental error "by failing to instruct the jury on justifiable homicide and excusable homicide."

While the failure to so instruct is deemed fundamental error when the defendant is convicted of attempted manslaughter or a greater offense not more than one step-removed, it was not deemed fundamental in this case because trial counsel "affirmatively agreed to the instruction being read to the jury without the definitions of justifiable attempted homicide and excusable attempted homicide."

The removal of these definitions was discussed in the charge conference. The prosecutor expressly told the judge that it would require an express affirmative representation from defense counsel of the intent not to seek the instructions. Counsel agreed on the record that she was not seeking the instruction.

Figueredo v. State, 5D18-3120 (June 28, 2019)

Figueredo was convicted on a drug trafficking charge. In addition to his prison sentence of seven years, the trial court suspended his driver's license for five years. In a rule 3.800(a) motion, Figueredo challenged that; the Fifth District reversed.

Section 322.055(1) limits license suspensions for those convicted of various drug and trafficking offense to one year "or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment program and rehabilitation program approved. . . ." The trial court provided no justification for the five-year suspension or explanation of the denial of the rule 3.800(a) motion.

K.R. v. State, 5D18-3137 (June 28, 2019)

"A juvenile who is on probation for a misdemeanor and who is being adjudicated for a technical probation violation, may be committed to a nonsecure residential placement only if the court finds by a preponderance of the evidence that

the protection of the public or the particular needs of the child would best be served by such a placement. Section 985.441(2)(d), Fla. Stat. (2018). Such findings must be in writing."

Ward v. State, 5D18-3679 (June 28, 2019)

A rule 3.850 claim that trial counsel was ineffective for failing to object to jurors seeing Ward in handcuffs during the trial was facially sufficient. The summary denial of the claim was reversed for further proceedings to either attach records conclusively refuting the claim or conduct an evidentiary hearing.

Shoulders v. State, 5D19-520 (June 28, 2019)

In a murder case, appellate counsel was ineffective for failing to raise one claim, as to which the defendant was given a new appeal.

The defendant argued that the jury's findings that the defendant discharged a firearm were contrary to the weight of the evidence. The State's theory in closing argument was that a co-defendant shot the victim. At the hearing on the motion for new trial, the prosecutor argued that both defendants possessed firearms, but only one fired and that it was a jury decision as to which one was the shooter.