Case Law Update
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Supreme Court of Florida

State v. Pacchiana, SC18-655 (Jan. 9, 2020)

During jury selection, defense counsel requested a race-neutral reason, and the prosecutor responded, in part, that the panel member was a Jehovah Witness, and that Jehovah Witnesses maintain that they cannot "sit in judgment." The trial court permitted the State to exercise a peremptory challenge. On appeal, the Fourth District held that the trial court erred in allowing the strike. That court found that the principles of Batson v. Kentucky extend to peremptory challenges based on religion. The Supreme Court granted review.

The Florida Supreme Court did not reach the issue of whether Batson extends to religion. Rather, it found that Pacchiana failed to preserved the objection to the State's peremptory strike. During the jury challenge conference, defense counsel requested a "race neutral reason." The prosecution responded, as noted above, by referencing the venire member's religion. The trial court then questioned the panel member regarding the effect that her religion would have on her impartiality. After questioning of the venire member, the State reasserted its concern as to whether the venire member could base her decision on the reasonable doubt standard. The defense responded: "We object to her being challenged for cause, then he's going to have to come up with a race neutral reason."

The Supreme Court found that the defense "only requested a race-neutral reason for the State's strike of the prospective juror. The issue that was raised on appeal to the Fourth District – that the venireperson was improperly struck based on her religion – was not preserved." The first time the defense referenced the prospective juror's religion as an improper basis for the peremptory challenge was in a written motion for mistrial filed five days after the prospective juror was excused and was untimely.

Richards v. State, SC19-24 (Jan. 16, 2020)

The Supreme Court addressed a conflict between the First and Fourth District Courts of Appeal "on the issue of whether the Sate, on remand, can request investigative costs pursuant to section 938.27(1), Florida Statutes 92019)."

The trial court accepted Richards' plea of nolo contendere and ordered the payment of $150 in investigative costs to a municipal police department. The State had not previously requested that the costs be imposed. Richards challenged the imposition of the costs and the Fifth District held that the trial court erred in imposing them in the absence of a request from the State or evidence from the investigating agency. The Fifth District remanded the case to the trial court and provided that "'the State should be given the opportunity to request the imposition of investigative costs.'"

The Supreme Court construed the language in section 938.27(1) and concluded that it was clear and unambiguous: the State must request the costs before the judgment is rendered. "Here, the State failed to request investigative costs before the trial court pronounced sentence and entered Richards' judgment. . . . Because any future request by the State would occur after Richards' currently enforceable judgment that imposed his sentence, the State's opportunity to request investigative costs has passed."

In Re: Standard Jury Instructions in Criminal Cases – Report 2019-10, SC19-1760 (Jan. 16, 2020)

The Supreme Court authorized for publication and use amendments to standard jury instructions 28.6, 28.7, 28.8 and 28.8(a), which all pertain to offenses of fleeing to elude a law enforcement officer. The amendments removed the definition for "operator," and updated the statutory citations for "street or highway" and "vehicle."

In Re: Standard Jury Instructions in Criminal Cases – Report 2019-09, SC19-1696 (Jan. 16, 2020)

The Supreme Court authorized for publication and use amendments to standard jury instructions 11.10(g) (lewd or lascivious exhibition by a detainee in the presence of an employee of a facility), 14.1 (theft), 21.16 (falsely impersonating an officer), 25.7 (possession of a controlled substance), and 25.14 (use or possession with intent to use drug paraphernalia).

Instruction 11.10(g) expands the offense, pursuant to a recent legislative amendment, "to include commission of lewd or lascivious exhibition in a county detention facility." Instruction 14.1, grand theft, changes the value of the property stolen from $300 or more to $750 or more, based on a recent statutory amendment, and modifies the definition of "fire extinguisher."

Instruction 21.16, pursuant to recent statutory amendment, adds "a school guardian as described in s. 30.15(1)(k)" and "a security officer license under chapter 493" "to the list of impersonated individuals covered by the crime." It also removes the term "watchman," and adds "officers of the Department of Environmental Protection" to the list of those covered by the crime.

In Re: Standard Jury Instructions in Criminal Cases – Report 2019-08, SC19-1654 (Jan. 16, 2020)

The Supreme Court authorized for publication and use amendments to standard jury instructions 8.7(a), 8.7(b), 8.7(c), and 8.7(d), all of which relate to offenses of aggravated stalking. The instructions "are updated to include the amended definition for 'cyberstalk'" based on a recent statutory amendment, and instruction 8.7(b) moves a citation to Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007), from the comment section to the definition for "maliciously." The citation to Seese is also added in 8.7(d).

Martin v. State, SC18-214, SC18-1696 (Jan. 16, 2020)

The Supreme Court affirmed the denial of a Rule 3.851 motion and denied a habeas corpus petition which alleged ineffective assistance of appellate counsel.

Trial counsel was not ineffective for failing to use investigators who were appointed to work on the case. Based on testimony adduced at an evidentiary hearing, the Supreme Court concluded "it was a reasonable strategic decision to focus investigator efforts on collecting mitigation evidence for a potential penalty phase while [counsel] conducted the guilt-phase portion of the investigation."

Counsel was not ineffective for failing to investigate two eyewitnesses with respect to the misidentification defense as to whether Martin was the shooter. One was a witness who stated "that he looked the suspect in the eye and could identify him again, and then fail[ed] to identify the defendant from photospreads." While counsel was found deficient for not speaking to that witness, Martin did not

demonstrate prejudice for the claim of ineffective assistance of counsel. Trial counsel had spoken to Martin and Martin admitted he was the shooter. Martin's burden, at the 3.851 evidentiary hearing, was to demonstrate that investigation of this witness would have altered counsel's decision to avoid calling this witness as a reasonable trial strategy. Counsel wanted to limit testimony to the jury regarding illegal drugs or Martin's heavy use of illegal drugs.

The other witness was contacted by counsel and would have testified that Martin was not the person shooting. However, that witness gave a physical description of Martin which matched that of the shooter.

Counsel was not ineffective for failing to hire a forensic expert who would have testified that the shooter did not fire directly into the passenger-side door. "the evidence presented during trial . . . reflects that the shooter fired into the SUV from the driver side, then the front, and finally from the front edge of the passenger side. This demonstrates the shooter moved around the car and shot Daniels from multiple directions." Nor would trajectory or blood spatter analysis have helped defeat premeditation: "Even if all the shots that hit and killed Daniels were fired from the driver side and no shots were fired directly through the passenger-side door, this does not change the fact that the shooter moved around the vehicle."

The Court further rejected claims that counsel was ineffective for failing to cross-examine six witnesses. The opinion provides extensive details as to the testimony of each witness. These claims were rejected for multiple reasons. For some, counsel's desire, noted at the evidentiary hearing, to avoid eliciting potentially damaging testimony was deemed reasonable. As to some, the pretrial statements were shown not to have been inconsistent with the trial testimony and thus not amenable to impeachment by prior inconsistent statements. As to some, other testimony from the witnesses had made the same point that further cross-examination might have elicited. As to all, the Court found that there was no reasonable probability that further cross-examination would have changed the result of the proceeding.

Brady and Giglio challenges were also rejected. The trial court conducted an evidentiary hearing and rejected the proffered testimony as not credible. The trial court noted that the witness in question "was argumentative and uncooperative during her evidentiary hearing testimony, even going so far as to say she did not recall having testified previously before a jury." A claim that one witness was threatened or harassed by police was rejected on the basis of the failure of the defendant to present sufficient testimony at the evidentiary hearing.

Martin argued that appellate counsel was ineffective for failing to object to multiple comments by the prosecutor in closing argument. Some were deemed "concerning" by the Supreme Court, but did not rise to the level of fundamental error and the arguments would not have altered the outcome of the prior direct appeal. One was a comment that the defendant turned the victim into "target practice." Another was that the presumption of innocence "has not been blown away just like [Martin] did to Javon Daniels." And, the prosecutor used the term "you," "in describing how Daniels attempted to escape from the vehicle with two broken arms while Martin tracked him by walking around the vehicle." The use of "you" could be "read to invite the jurors to put themselves in Daniels' place."

Eleventh Circuit Court of Appeals

United States v. Mancilla-Ibarra, 17-13663 (Jan. 15, 2020)

The Eleventh Circuit affirmed a conviction for conspiring to distribute and possessing with intent to distribute 500 grams or more of methamphetamine, and rejected arguments that the district court erred in finding probable cause for an arrest and then denying a suppression motion, and that the district court erred in denying a two-level reduction in the offense level.

Officers conducted a sting operation and relied on information from a dealer-turned-informant, Fann, in addition to a confidential informant. "Fann personally observed the criminal activity and interacted with his supplier, so he had a clear basis to know with whom he dealt and how to order more methamphetamine." "Fann's veracity and reliability were supported by his consent to the officers' search of his home, his voluntary turning over of drug proceeds, his voluntary admission that the officers had missed three kilograms of drugs hidden in his walls during the search, and his statement (confirmed by video surveillance) that a white van with Georgia tags delivered his drugs." Fann eventually placed an order for three kilograms, pursuant to officers having requested him to do so. The seller provided Fann with an estimated time of arrival, and near that time, the white Kia van with Georgia plates approached Fann's home. The officers arrested the defendant, the driver, without a warrant. Minutes later, a drug sniffing dog alerted and three kilos were found hidden in the rear speaker of the passenger door.

The two-level reduction to the base offense level was rejected because the defendant failed to satisfy the safety-valve criteria, which provision of the Guidelines "requires the district court to 'impose a sentence in accordance with the

applicable guidelines without regard to any statutory minimum' if the defendant satisfies five criteria." The defendant was not entitled to the safety-valve relief "because his guidelines range is not below the statutory minimum with or without the two-level reduction under section 2D1.1(b)(17)." One of the five criteria factors was in dispute here – the "tell-all" provision, under which the defendant provides truthful information and evidence to the government concerning certain offenses up until the time of the sentencing hearing. The government maintained that the information provided by the defendant about one of his coconspirators was incomplete and that he had lied about the number of deliveries he made to Fann.

It is the defendant's burden to prove entitlement to the offense-level reduction. However, here, the government's rebuttal evidence was deemed not reliable. Although the rebuttal evidence was not reliable, the defendant failed to carry his burden of demonstrating he was truthful about the number of deliveries.

Second District Court of Appeal

S.L.W. v. State, 2D18-3546 (Jan. 17, 2020)

Evidence "established nothing more than S.L.W.'s mere presence near the scene of the burglary in the company of another person who was in possession of the stolen item," and the evidence was therefore insufficient to prove burglary of a dwelling or grand theft.

A witness observed three juveniles walking on a street; one was straddling a bicycle, which looked like it belonged to the witness's daughter, who lived across the street. The witness went to check his daughter's carport and confirmed that it was missing. The witness and his son-in-law then pursued the juveniles and the one on the bicycle abandoned it and fled. The other two, including S.L.W., refused to provide their names or the name of the one who fled. When police subsequently apprehended the three juveniles, S.L.W. gave a statement and denied being present when the bicycle was stolen.

Howard v. State, 2D17-4947 (Jan. 15, 2020)

On appeal from convictions for two counts of first-degree murder and possession of a firearm by a convicted felon, the Second District reversed and remanded for a new trial, concluding that this was one of the rare cases where it could be found on direct appeal that trial counsel was ineffective on the face of the

record. Trial counsel failed to object when the State "improperly presented evidence of [] prearrest, pre-Miranda silence," which was used to prove the defendant's guilt.

The defendant was a neighbor of the victims, and the State and defense had competing theories of the case, both of which revolved around heated confrontations between the defendant and one of the neighbors. Under the State's version, Howard was upset because one of the victims parked landscaping business trucks near the defendant's house, blocking his driveway, and the defendant ended up getting a gun from his house and shooting both victims. Under the defendant's version, one of the victims was enraged, believing the defendant was going to disclose the victim's extramarital affair to the victim's wife; the victim threatened the defendant with a gun; a struggle ensued when the defendant went for the gun, and the gun went off during that struggle, resulting in the shooting of the other victim. The defendant then wrestled the gun away and shot the first victim in self-defense.

During opening arguments, "the prosecutor told the jury that when the police approached Mr. Howard at J.C.'s home and asked Mr. Howard what had happened, Mr. Howard remained silent." An objection was made, but the court never ruled on it when the parties did not provide the court with requested case law. The State then presented its first witness, a responding officer, who was trying to find out what happened from the defendant. He said that the defendant "only would indicate that he wasn't shot" "and otherwise 'refused to answer any questions.'" When asked whether the defendant stated that "he had been engaged in a struggle for his life and that he had acted in self-defense," the officer said no. The officer also said that the defendant stated that "they were going to shoot me too, or they would shoot me too, something to that effect," but "otherwise 'refused' to answer any questions."

During closing argument, the prosecutor argued that common sense told the jury that the defendant would have said something about self-defense when he was talking to the officer but he did not say anything about it.

The Second District summarized relevant precedents from the Florida Supreme Court, which established "that (1) a defendant's postarrest, pre-Miranda silence may not be used either as substantive evidence or for impeachment purposes and that (2) a defendant's prearrest, pre-Miranda silence may not be used as substantive evidence but may be used for impeachment if the silence is inconsistent with the defendant's testimony at trial. . . . Silence is inconsistent with a defendant's exculpatory trial testimony in circumstances where, giving due consideration to reasons why the defendant's silence may instead be ambiguous, it would have been natural for the defendant to speak to deny an accusation."

The testimony and comments described above went to prearrest, pre-Miranda silence and were improper. They were used as substantive evidence of consciousness of guilt, not for impeachment purposes. The defendant was not questioned on cross-examination about silence.

In the absence of a ruling on the original objection, or any objection when the testimony was presented, the defendant presented the claim as one of ineffective assistance of trial counsel. Based on the controlling case law, the Second District first concluded that counsel was deficient for failing to present the trial court with the relevant case law when the court had requested it. The appellate court could not see any possible tactical reason for defense counsel not to have presented such case law. As to the question of prejudice for the claim of ineffective assistance of counsel, the appellate court referred to it as "a close call," but found that prejudice existed. The case involved more than just a passing reference to the prearrest, pre-Miranda silence. It entailed the opening argument, the first witness, and extensive comments in closing argument.

Hamiter v. State, 2D18-2104 (Jan. 15, 2020)

Counsel for the Appellant filed an Anders brief, which referenced the trial court's ruling a Rule 3.800(b) motion in which the defendant had challenged the imposition of a fine of $50,000 and a five-percent surcharge of $2,500. The trial court had granted the motion, but had done so after the expiration of the time for ruling on such a motion – 60 days. While an extension may be obtained for good cause, the trial court had not done that. As a result, the Second District had to treat the trial court's order as a nullity and deem the 3.800(b) motion denied. The Second District reversed that denial and remanded for entry of another order granting the motion.

The Court then certified a question of great public importance to the Florida Supreme Court:

> ASSUMING APPOINTED COUNSEL MAY CHALLENGE IN AN ANDERS "NO MERIT" BRIEF THE TRIAL COURT'S DENIAL OF A RULE 3.800(B)(2) MOTION TO CORRECT A "MINOR SENTENCING ERROR," WHAT CONSIDERATIONS INFORM THE DETERMINATION OF WHETHER THE SENTENCING ERROR IS, IN FACT, "MINOR"?

Third District Court of Appeal

Wright v. State, 3D17-941 (Jan. 15, 2020)

The Third District affirmed convictions for burglary and armed robbery.

The defendant argued that the trial court "failed to make any credibility findings or articulate a legal basis for its denial of the motion to suppress. At trial, however, the State did not seek admission of any of the physical items seized from the car listed in the motion, and none of the witnesses testified about those items."

The defendant also argued that the trial court erred in denying a motion to suppress his confession, asserting that even though there were Miranda waivers, the confession was coerced through the use of threats, the choking and slapping of the defendant, and the placing of a gun to the defendant's head. The Third District found that the evidence at the suppression hearing, including videotapes of the confession, refuted this claim.

During voir dire, the prosecutor stated, "if the defendant were to testify – and if he does not. . . ." Defense counsel objected immediately. The sentence was not completed. The prosecutor then continued: "I'll repeat again. They [the defense] don't have to put on anything. The burden is mine. The burden belongs to the State. My question to you is, if you believe if – if the defense were to put on any witnesses including the defendant, they are bound by the same rules as the State." The court did not rule on the original objection, and the objection was not renewed after the prosecutor's subsequent statement.

The Third District stated: "With no ruling on the objection by the trial court, however, and no motion to strike the venire based on that comment, we concluded that this isolated comment did not violate the Defendant's right to remain silent, and did not vitiate the fairness of the trial." The opinion cited a Florida Supreme Court decision, with a parenthetical referencing the absence of fundamental error.

The trial court also permitted a detective to testify that she interviewed the defendant about other robberies. The detective was "trying to orient the Defendant to this particular robbery at the Marathon gas station out of the many others they had already discussed." The detective was precluded from testifying about the defendant's confessions to other robberies and murders. The details of the other offenses were not admitted into evidence. They were "obliquely referred to as

'events' and 'incidents.'" An instruction was also given to the jury, that it "was not to presume because the Defendant spoke with the detective about this and other robberies, that he was involved in any other incidents whatsoever."

Cardona v. State, 3D17-2767 (Jan. 15, 2020)

The Third District affirmed convictions for first-degree murder and aggravated child abuse. A medical examiner testified that the child's cause of death was child abuse syndrome. The defense argued that "this testimony was inadmissible because the 'true cause of death' was blunt force injury'" and that this "confused and misled the jurors and forced them to reject the defense theory of the case." The Third District found that the trial court did not abuse its discretion in admitting the testimony.

Evidence of the battered child syndrome is admissible to refute a claim of accidental death, or to prove intent. "Despite Cardona's claims on appeal, Dr. Hyma did not opine that the **sole** cause of death was battered child syndrome. In fact, he conceded that either the syndrome or the blunt force injury would have alone been sufficient to cause L.F.'s death. He testified that it was his opinion that the cause of death was battered child syndrome, which Florida law permits." "The battered child syndrome evidence was relevant and admissible to prove both intent and lack of accident, which is precisely what the State used it for. It is irrelevant that Cardona chose a trial strategy other than accidental death."

M.C. v. State, 3D19-470 (Jan. 15, 2020)

The trial court conducted a juvenile disposition hearing without the juvenile's presence in the courtroom. M.C. was already in DJJ's custody at a facility as a result of dispositions in two other cases. The judge was placing M.C. in the same program and facility with a concurrent placement. Regardless of the court's practical considerations for not transporting M.C., his presence was still constitutionally required absent a waiver.

Saladriga v. State, 3D19-473 (Jan. 15, 2020)

Although the trial court orally pronounced the defendant to be a danger to the community, as required for sentencing as a violent felony offender of special concern under s. 948.06(8), Florida Statutes, the court failed to reduce those findings to writing; the case was remanded for the entry of such written findings as to the defendant posing a danger to the community.

Fourth District Court of Appeal

Larocca v. State, 4D18-1824 (Jan. 15, 2020)

At the time of trial, the Frye test was applicable. At the time of the appeal, Daubert was applicable. The Fourth District applied Daubert on appeal and conclude that the implementation of Daubert was procedural and that it applied retroactively. Additionally, it was applicable on direct appeal as the direct appeal fell under the "pipeline" rule.

Applying Daubert, the Fourth District concluded that the trial court "properly exercised its gatekeeping role under *Daubert* in admitting the toxicologist's testimony. Prior to rendering his opinion, the toxicologist discussed his relevant education, training, and experience as a toxicologist and medical examiner as well as the science supporting his opinion." Alternatively, any error was harmless where the testimony was cumulative to other unobjected-to testimony that "he could not determine what percentage of the alcohol in the victim's body was from body decomposition and what was from consumption by the victim."

Cassaday v. State, 4D18-3066 (Jan. 15, 2020)

The trial court did not abuse its discretion when it limited the time for voir dire questioning. Cassaday was tried for sexual battery. The court gave each side 45 minutes for voir dire and then permitted extensions so that the total time for the defense was 75 minutes. Defense counsel objected to the original 45 minutes based on increased media coverage of sexual battery cases in general, in addition to the defense's intent to offer a false confession defense. Counsel sought two hours for voir dire for 40 prospective jurors.

Schultz v. State, 4D18-3413 (Jan. 15, 2020)

The trial court did not abuse its discretion "in denying defense counsel's legally insufficient motion to withdraw filed on the even of sentencing."

The Fourth District, in a prior appeal, affirmed the convictions but reversed and remanded for resentencing. On remand, both private counsel and the public defender attended a status check hearing. Private counsel attended a second status hearing and the court discharged the public defender and continued the sentencing hearing.

Prior to sentencing, the defendant filed a pro se motion for downward departure. The day before the sentencing hearing, counsel moved to withdraw, citing irreconcilable differences, without any details. The court inquired of counsel at the outset of the sentencing hearing and counsel referenced discussions with the defendant and the pro se motion, without any specific details. The judge denied the motion and struck the pro se motion for downward departure as unauthorized. Defense counsel then moved for an ex parte hearing as to the need to withdraw; that request was denied. Counsel stated that he had a conflict with the defendant. The court reiterated its denial.

The trial court did not err in denying the motion to withdraw where it was filed on the eve of sentencing and would have "hindered the functioning of the court as there would not have been time for appellant to procure new counsel." Additionally, counsel provided no details as to the alleged conflict, even when the court specifically inquired at the outset of the sentencing hearing.

The defendant also challenged the striking of the pro se motion for downward departure. The Fourth District rejected the State's concession of error as to this. In the prior appeal, the Fourth District reversed and remanded a departure sentence "for resentencing within the guidelines." On remand, the trial court believed it could not impose a downward departure sentence. However, the Fourth District stated that on remand for resentencing, a trial court may impose a downward departure if there is a valid basis for one.

Although the State's concession regarding the trial court's inability to entertain a departure sentence was incorrect, the trial court still had authority to strike the motion for downward departure because it was filed pro se while the defendant was represented by counsel. And, the trial court alternatively stated that even if it could consider the motion for a downward departure, this was not a case in which the court would have granted the downward departure. The sentence imposed was therefore affirmed.

Driver v. State, 4D18-3690 (Jan. 15, 2020)

Driver appealed convictions for multiple drug-related offenses. Convictions for trafficking in heroin and possession of heroin with intent to sell constituted a double jeopardy violation. Trafficking in heroin does not include an element that the possession offense lacked.

The Court also found sufficient evidence to support reclassification of offenses based on possession of a firearm during the course of trafficking. "Appellant's trafficking offenses, as well as his drug possession offenses, were essentially ongoing. The firearms were found with the drugs in appellant's bedroom and thus were in his constructive possession."

The Court also rejected the defendant's argument that reclassification of the offense based on possession of a firearm under section 775.087(1) requires actual possession at the time of the offense. The 10-20-Life provisions of section 775.087(2) do require that a defendant "actually possessed a 'firearm.'" The reclassification provision, however, uses different language, and it applies if a defendant "carries, displays, uses, threatens to use, or attempts to use any weapon or firearm. . . ."

Fifth District Court of Appeal

Vega v. State, 5D19-729 (Jan. 17, 2020)

The Fifth District reversed the denial of one claim of a Rule 3.850 motion for an evidentiary hearing. Vega was convicted of the first-degree felony murder and aggravated child abuse of his then-girlfriend's three-year-old son. He initially said he was not present when the child was injured, but that was exposed as a lie. He then told police that the child fell down a flight of stairs while he was on the phone. At trial, the medical examiner stated that a fall down the stairs could not have produced the force needed for the injury observed and that the cause of death was blunt force applied to the head as a result of child abuse. Vega was the only adult present at the time of the injury.

In 2009, Vega filed his second Rule 3.850 motion, based on a report from Dr. Anderson, who stated that in 1999, "the medical community did not believe 'short distance' falls could cause death," but that studies since then had led to the "prevailing belief" that "a 'short distance' fall may be a reasonable cause of death when certain medical evidence is apparent.'" That motion was denied in 2010 as untimely. On rehearing, the trial court stated that the defendant was simply seeking to present new experts with different conclusions.

In 2013, a third motion, based on another expert, stating that the cause of death was septic shock brought on by meningitis, resulted in an evidentiary hearing, but was denied; the new expert died prior to the evidentiary hearing.

In 2018, Vega filed his fourth Rule 3.850 motion, based on Dr. Anderson's prior opinion from 2008, as well as the opinion of the deceased expert from 2013. Vega again claimed that this was newly discovered evidence and alternatively asked for reconsideration of the Fifth District's earlier decisions affirming the trial court, to prevent a manifest injustice.

The Fifth District first observed that presenting new experts who draw different conclusions does not constitute a claim of newly discovered evidence. "However, in some cases, recent medical studies, reports, and articles – not available at the time of trial – have been held to constitute newly discovered evidence. . . . Similarly, case specific studies that cast doubt on critical state evidence can also constitute newly discovered evidence . . . provided that the study or report is more than just a new opinion based on a compilation of analyses of previously existing data and scientific information."

As the Fifth District previously concluded that the expert opinions relied upon at this time had not constituted newly discovered evidence several years prior, Vega had to demonstrate a manifest injustice in order to relitigate the claim and overcome the procedural bar of the prior appellate court rejection of the claims. A "showing of manifest injustice 'requires, at a bare minimum, "a definite and firm conviction that a prior ruling on a material matter is unreasonable or obviously wrong" and resulted in prejudice.'"

Based "on the unique facts in this case," the Court concluded that a manifest injustice had occurred and that reconsideration was warranted. An evidentiary hearing was mandated for the trial court.

Moran v. State, 5D19-1833 (Jan. 17, 2020)

The Fifth District denied a habeas corpus petition alleging ineffective assistance of appellate counsel.

On direct appeal, appellate counsel filed an Anders brief, which noted a potential issue – the denial of a motion to suppress in the trial court. Because that issue was noted in the Anders brief, and the appellate court's review on direct appeal after the filing of an Anders brief necessarily determined that the claim had no merit, the attempt to assert the suppression issue as a claim of ineffective assistance of appellate counsel necessarily failed.

Similarly, after the filing of the Anders brief, Moran filed a pro se brief on direct appeal, arguing that a motion for mistrial had erroneously been denied. Once again, the Fifth District, on direct appeal, necessarily found that that claim had no merit, and appellate counsel could not have been ineffective for failing to raise that issue on direct appeal.

Lastly, on another claim, the Court found that dual convictions for attempted first-degree murder of a law enforcement officer with a weapon and aggravated battery with a deadly weapon or causing great bodily harm on a law enforcement officer did not result in a double jeopardy violation.

Thomas v. State, 5D19-2637 (Jan. 17, 2020)

The Fifth District affirmed the denial of a Rule 3.800(a) motion to correct illegal sentence.

Thomas received 28-year prison sentences on three different cases, running concurrently. Two of the cases had 10-year mandatory minimum sentences, which ran concurrently. Two of the cases had three-year mandatory minimum sentences which ran concurrently. There were also consecutive mandatory minimum sentences includes, with the result that Thomas was serving 28 years in prison, with 23 years as a mandatory minimum sentence.

He argued that "his overall sentencing scheme is illegal because it requires that he serve[] portions of his various sentences both concurrently and consecutively, in violation of what he asserted is this court's precedent against a defendant serving fragmented or interrupted sentences."

The Fifth District's opinion provides explanations and analysis of its prior cases addressing this issue. While Thomas was arguing that "'a prisoner is entitled to pay his debt to society in one stretch, not in bits and pieces,'" the Court found that "Thomas is not serving his sentences 'in bits and pieces.'"

In the Court's prior decisions, problems arose because there were "definitive breaks in the defendants' sentences in those cases such that each defendant could not continuously serve his complete sentence in one stretch. In contrast, Thomas is serving the concurrent and consecutive portion of each sentence in each of his cases in one continuous stretch."