

Case Law Update
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Supreme Court of Florida

[Sweet v. State](#), SC19-195 (Feb. 27, 2020)

Sweet appealed the summary denial of his eighth successive Rule 3.851 motion.

The Court rejected a Brady claim. In a prior Rule 3.851 motion, Sweet argued, on the basis of an affidavit from a jail inmate, that that inmate witnessed the murder and had favorable testimony to provide for Sweet. At an evidentiary hearing on that earlier motion, the State produced jail records showing that Sweet was in jail at the time and could not have witnessed the murder. In the current 3.851 motion, Sweet relied on other law enforcement records which suggested Sweet was not in jail at that time. The Supreme Court concluded that that was not significant. At the evidentiary hearing on the prior motion, the judge further found that the jail inmate in question was not credible, as he kept changing his testimony as to what he saw. Thus, the new records would not have had any bearing on the trial court's prior conclusion that the jail inmate/witness was not credible.

A claim that prior postconviction counsel was ineffective for failing to discover notes regarding trial counsel's alcoholism was not cognizable. Ineffective assistance of postconviction counsel is not a viable claim. This was also raised in an untimely manner as the one-year period had expired long prior to the filing of the motion. Sweet argued that the one-year period was inapplicable because of prior postconviction counsel's failure to discover the relevant documentation. That did not matter – the one-year period relates to the filing of the motion, not the individual claim.

Finally, a claim of actual innocence is not viable as an independent claim in postconviction proceedings in Florida.

[In Re: Standard Jury Instructions in Criminal Cases – Report 2019-12](#), SC19-1856 (Feb. 27, 2020)

The Court approved for publication and use new instructions – 21.19(a), 21.19(b) and 21.19(c). The instructions pertain to offenses involving the causing of harm, harassing or interfering with dogs or horses used by police or fire rescue. Section 843.19, Florida Statutes, was amended in 2019 to add “canines” to the offense that previously referenced “dogs.” These new instructions are written to conform to section 843.19.

[In Re: Standard Jury Instructions in Criminal Cases – 2019-11](#), SC19-1806 (Feb. 27, 2020)

The Court approved for publication and use amendments to the following instructions: 3.12 (verdict); 8.26 (sexual cyberharassment); 11.21 (transmission of material harmful to minors by electronic device or equipment); and 27.1 (attempted escape).

The sexual cyberharassment instruction adds language regarding the “dissemination” of a sexually explicit image and defines “personal identification information.”

The instruction on attempted escape adds language regarding a person “released on furlough,” based on a recent statutory amendment.

First District Court of Appeal

[Freeman v. State](#), 1D18-5184 (Feb. 25, 2020)

Pursuant to the Florida Supreme Court’s recent decision in [Love v. State](#), the First District granted a petition for writ of prohibition and remanded the case for a new pretrial immunity hearing under the stand your ground law. The 2017 statutory amendment, which changed the burden of proof, applies to all immunity hearings held after the effective date of the 2017 amendment.

Second District Court of Appeal

[State v. Brookins](#), 2D18-1973 (Feb. 28, 2020)

The trial court erred by suppressing evidence obtained through a search incident to arrest after a traffic stop.

Police responded to a tip about six men selling drugs at an intersection. When they arrived, undercover, they observed a truck parked along the street, facing the wrong direction for traffic. A driver and passenger, the defendant, were in the truck, with the passenger's door open. Two other men were standing alongside the truck. The officers approached, and when someone yelled "vice," the defendant closed the passenger door. Officers directed both the driver and defendant to open their doors, but they refused; the defendant put his hands up. The officers called for backup and moved their vehicle to block the truck and prevent it from leaving. The officers had also smelled marijuana when they approached the vehicle.

When the defendant eventually opened the door, smoke emanated from the truck. The defendant was ordered out of the truck, handcuffed, and subjected to what the officer called a very quick patdown, which did not result in the discovery of any contraband. When backup officers arrived, one of them was asked to do a further patdown search. The officer who did this smelled burnt marijuana on the defendant's clothes and during the search of the defendant a firearm fell from his person to the ground. While the second officer was searching the defendant, the prior officer was searching the truck and found a burnt roach in the ashtray and marijuana flakes on the floorboards of both the driver's and passenger's sides.

The trial court granted the motion to suppress, concluding that there was nothing connecting the marijuana in the vehicle to the defendant. The Second District disagreed. The "odor of burnt marijuana emanating from a vehicle – like we have here – provides probable cause to search each of the vehicle's occupants." Although it was subsequently learned that the marijuana was not connected to the defendant, that did not matter. The officers had no way of knowing that at the time that they were conducting the search.

[N.J.O. v. State](#), 2D18-2444 (Feb. 28, 2020)

The trial court erred in denying a motion to suppress N.J.O.'s statement "to law enforcement officers after N.J.O. expressed his intent to invoke his Miranda

rights by requesting that he be allowed to have ‘someone’ with him during questioning.”

After going through the Miranda warnings, questioning of N.J.O. proceeded as follows:

N.J.O.: I don’t know what all these legal questions mean, so I want to, like have somebody with me. I’m not trying to be difficult or anything. Like, I just don’t know, because you guys word stuff funny sometimes.

Det.: Well –

N.J.O.: Not funny, but you guys use big words sometimes, that I don’t understand.

Det.: And we’re not trying to trick you up, that’s why I’m asking you. I need to ask you some questions about this case, but before I do so, I need to read you your rights.

N.J.O.: Yes, sir. I do understand.

The quoted statement, about wanting to have someone with him, “was sufficiently clear to inform the officers that N.J.O. wanted to invoke – not waive his Miranda rights.” Questioning should have stopped at that point.

The statement should also have been suppressed because the record did not demonstrate that any purported waiver of rights was knowing and voluntary. N.J.O. was 16 years old, with a 0.9 GPA, with no prior experience with the law, and was not permitted to speak with his mother, even after asking to speak to “someone.” The “officers attempted to cajole N.J.O. into speaking with them.” The appellate court noted that it generally defers to the trial court as to such findings, but the record in this case included an audiotape of the questioning by the officers, and the trial court was therefore in no better position to evaluate that evidence than was the appellate court.

[Lineberger v. State](#), 2D18-3503 (Feb. 28, 2020)

The trial court erred in dismissing a second Rule 3.800(a) motion as successive. The first motion was pro se, and argued, on the basis of Miller v.

Alabama, that equal protection required resentencing of Lineberger because his codefendants received resentencing. The second motion was filed by the Public Defender's Office, and argued that the sentence was illegal under Miller v. Alabama.

A rule 3.800(a) motion can be barred as successive only if the issues in the two motions are the same. The two motions here were different. The first sought relief simply because codefendants received relief. The second alleged an actual violation of Miller v. Alabama.

[Hicks v. State](#), 2D18-4520 (Feb. 28, 2020)

The affidavit in support of a search warrant was found to be insufficient to establish probable cause for a search, and the Second District remanded the case to the trial court to conduct an evidentiary hearing, to determine, under United States v. Leon, 468 U.S. 897 (1984), whether the officers acted in reasonable reliance on the issuance of the warrant.

The affidavit related a single controlled purchase of methamphetamine at a particular address within the past 30 days. On the basis of this incident, the affiant expressed a belief that additional contraband would be found at that residence. In addition to the information in the affidavit being very sparse, as the affidavit asserted that an officer conducting surveillance never lost sight of the informant who was involved, it was clear that the informant never entered the residence itself.

The trial court ruled on the basis of the probable cause affidavit itself and did not conduct an evidentiary hearing. As a result, the appellate court could not make its own determination as to whether the officers were acting in good faith under Leon; an evidentiary hearing was required.

[Bouie v. State](#), 2D18-2705 (Feb. 26, 2020)

The Second District granted a petition for writ of prohibition based on stand your ground immunity.

Bouie admitted shooting the victim, but said “he did so because he reasonably believed Mr. Favors [victim] was going to attack Mr. McGee with a gun.” The trial court rejected the immunity claim, finding that Bouie “initially provoked” Favors’ use of force, and “although Mr. Bouie ‘may possibly have believed that’ Mr. Favors had ‘a weapon to be used against Mr. McGee’ and ‘may possibly have believed that he needed to defend his brother,’ the State proved by clear and convincing evidence

that any such belief ceased to be reasonable because ‘after [Mr. Bouie] initially fired at the victim, he continued to fire an additional number of shots at what appears to be a retreating target.’”

The Court first addressed an issue of statutory interpretation. Section 776.041(2), provides that the justification for the use of deadly force does not exist when the person asserting justification “[i]nitially provokes the use of threatened use of force against himself or herself.” Based on clear statutory language, “a person does not get to claim that he was acting in self-defense if he is defending himself from violence that he provoked in the first instance.” “What the statute does not say is that justification for the use of deadly force and its corresponding immunity under the stand-your-ground law are also unavailable when the defendant provokes a threat to a third-person as distinguished from himself.”

After concluding that the initial provocation exception did not apply since this case involved the purported defense of a third person as opposed to the initiator himself, the Court then proceeded to find that the State did not prove by clear and convincing evidence that Bouie was not entitled to immunity. The Court analyzes the burden of proof and standard of review in light of the 2017 statutory amendment to the burden of proof and concluded that “we should review a trial court’s ultimate conclusion that the defendant did not reasonably believe that the use of force was necessary to prevent imminent death or great bodily harm under the de novo standard.” The Court further sets forth the meaning of the State’s burden under the clear and convincing evidence standard.

Analyzing the facts found by the trial court, the Second District emphasized “that the parties had an acrimonious history including prior violent confrontations, that they arrived at the parking lot expecting a confrontation, and that Mr. Bouie saw Mr. Favours emerge from his car and head toward Mr. McGee’s car carrying an eight-inch can of mace that may have been a weapon to be used against Mr. McGee. The facts found by the trial court’s order show that the State had not clearly and convincingly proved that Mr. Bouie at no point ever during the events had a reasonable belief that deadly force was necessary to prevent imminent death or great bodily harm to Mr. McGee.” Furthermore, the evidence adduced at the hearing had substantial conflicts as to how the incident occurred and the trial court did not resolve those conflicts.

[State v. Spears](#), 2D19-3209 (Feb. 26, 2019)

The trial court granted a Rule 3.800(a) motion to correct illegal sentence, but did not impose a new sentence. The State appealed that order and the Second District dismissed the appeal, finding that the order was not appealable. The Court certified conflicts with decisions of the First, Fourth and Fifth Districts.

Third District Court of Appeal

[State v. Marrero](#), 3D18-1819 (Feb. 26, 2020)

The trial court erred when it dismissed charges based on stand your ground immunity.

Marrero confronted Jackson when Jackson parked his vehicle in front of Marrero's business. Marrero claimed that Jackson took out a gas can and threatened to burn Marrero's business. Marrero then took the gas can away, brought it inside, retrieved his gun, and placed it in his waistband before going back outside. After a crowd came over and threatened Marrero, he removed the gun, without pointing it at anyone. He then called the police. Marrero was charged with aggravated assault with a deadly weapon, for allegedly pouring gasoline on a car occupied by Jackson.

The trial court's order was problematic, since it addressed the possession and use of the firearm, but the charge was based on the pouring of the gasoline. And, Marrero maintained that he did not commit the alleged act. The immunity statute, however, is based on the claim that the act in question was justified.

[Bradshaw v. State](#), 3D19-2079 (Feb. 26, 2020)

Bradshaw alleged, in a Rule 3.850 motion, that counsel was ineffective for failing to file a pretrial motion to dismiss based on stand-your-ground immunity. The trial court denied the motion without an evidentiary hearing. The Third District reversed for further proceedings, because the records attached to the trial court's order did not conclusively refute the claim.

The State argued that Bradshaw did not demonstrate prejudice because there was no evidence to suggest that he would have actually testified at such a hearing or that the outcome would have been any different if he had a hearing and testified at it. A conviction after Bradshaw's first trial had previously been reversed and remanded for a new trial, and Bradshaw was convicted at his second trial. "Without

an evidentiary hearing, however, there is nothing in the record to support this assertion. The record on appeal does not provide any insight into defense counsel's considerations or discussions with Bradshaw in preparation for the retrial. Without an evidentiary hearing, the trial court cannot speculate as to whether defense counsel's failure to file a pretrial motion to dismiss was a strategic decision or constituted ineffective assistance of counsel."

[Fernandez v. State](#), 3D20-177 (Feb. 26, 2020)

A petition for writ of prohibition seeking the disqualification of the trial court judge from presiding at a postconviction evidentiary hearing was granted. The petition alleged that Fernandez's former counsel was going to testify at the upcoming evidentiary hearing, and that the relationship between the former attorney and the presiding judge "deteriorated to such an extent that the trial judge entered an order disqualifying himself from all of that lawyer's cases. In support of his allegation, Fernandez offers a transcript of a hearing reflecting a contentious exchange between the lawyer and the trial judge culminating in the judge's instruction to his bailiff to escort the lawyer out of his courtroom." Fernandez established a reasonable fear that the judge would not receive a fair hearing where the judge would have to make credibility determinations with respect to the former attorney's testimony.

Fourth District Court of Appeal

[Boscan v. State](#), 4D18-1080 (Feb. 26, 2020)

The trial court failed to conduct a competency hearing and make a determination after having appointed experts to determine competency. Consistent with the remedy the Court previously approved, the Fourth District relinquished jurisdiction to the trial court for 30 days to hold a hearing and make a determination of competency at the time of trial, nunc pro tunc, if possible.

[Bevans v. State](#), 4D18-3008 (Feb. 26, 2020)

Bevans appealed a revocation of probation. The Fourth District affirmed and found that the trial court did not err by considering, as a sentencing factor, the speed with which Bevans committed new violations upon the commencement of his probation.

[Guadagno v. State](#), 4D19-1318 (Feb. 26, 2020)

Fla. Stat. s. 938.27(1), mandates the imposition of costs for the State Attorney at a minimum of \$100. The trial court erred in this case by imposing a greater amount without notice to the defendant and without record support for a greater amount and without considering the defendant's financial resources.

Fifth District Court of Appeal

[Colon v. State](#), 5D16-1789 (Feb. 28, 2020)

In Williams v. State, 242 So. 3d 280 (Fla. 2018), the Florida Supreme Court held that under the current juvenile sentencing scheme, the jury, not the judge, must make the determination of whether the juvenile actually killed, intended to kill, or attempted to kill. Colon's case was pending review in the Florida Supreme Court when Williams was issued and the case was remanded to the Fifth District for reconsideration in light of Williams. On remand, the Fifth District held that under the facts of the case, the Williams error was harmless.

The case proceeded to the jury under alternative theories of premeditated murder and felony murder, and the jury returned a general verdict. The defendant was living with the victim and he was the only person charged with the offense. There was no evidence of any other shooter. After the offense, the defendant was found sleeping with the firearm that was used in the killing under his pillow. Colon was later found with items taken from the victim. Colon also admitted to having killed the victim to a law enforcement officer. Admissions were made to other individuals as well.

[Jamerson v. State](#), 5D19-348 (Feb. 28, 2020)

Jamerson entered a no contest plea and sought to appeal the denial of his motion to suppress non-Mirandized statements that he made. The Fifth District affirmed. When a defendant appeals from either a no-contest or guilty plea, the defendant may reserve the right to appeal a "dispositive" issue – meaning that the State could not proceed at the trial court level if the defendant prevailed on the issue being appealed.

In this case, apart from the defendant's incriminating statements, there were multiple individuals present as eyewitnesses to the incident and the State could prove its case without the defendant's statements. As the issue was not dispositive and the

defendant did not move to withdraw his plea, the Fifth District affirmed the conviction and sentence.

[Jones v. State](#), 5D19-2023 (Feb. 28, 2020)

The trial court summarily denied the defendant's Rule 3.850 motion. When summarily denying a Rule 3.850 motion, the court must provide the defendant with an opportunity to amend the motion, if possible.

[Crawford v. State](#), 5D19-3058 (Feb. 28, 2020)

The defendant filed a Rule 3.800(a) motion, seeking both additional jail and prison credits for time served. Jail credit must be sought through Rule 3.801, not 3.800(a). Although the trial court treated this as a Rule 3.801 motion as to the jail credit, the court denied the motion because it was insufficient – it lacked an oath – and failed to provide an opportunity to amend. And, the court failed to address the portion of the claim properly raised in a 3.800(a) motion – the alleged denial of prison credit. The case was remanded for further proceedings.

[Ingram v. State](#), 5D20-102 (Feb. 28, 2020)

Ingram entered a plea in which the trial court agreed to release the defendant pending sentencing, and if the defendant failed to appear for sentencing, the court could exceed the maximum sentence under the plea and impose any lawful sentence. When the defendant arrived 90 minutes late, the court imposed a greater sentence.

The defendant subsequently filed a Rule 3.850 motion, which the court summarily denied. Although the trial court's order asserted that it found Ingram's lateness to be willful and that an evidentiary hearing was conducted, the trial court's written order did not attach either the transcript of that evidentiary hearing or any other court records to conclusively refute the claim.