

Case Law Update  
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Supreme Court of the United States

[Kansas v. Garcia](#), 17-834 (Mar. 3, 2020)

Kansas state statutes criminalize identity theft. The Kansas law against identity theft was not preempted by federal statutes regarding identity theft. The Supreme Court rejected arguments by Garcia based on express preemption, implied preemption, and conflict between the state and federal statutes. Four justices dissented with respect to implied preemption.

The individuals prosecuted in Kansas state courts were aliens who were not authorized to work in the United States, but secured employment by using the identity of others on government forms (I-9). They were convicted for “fraudulently using another person’s Social Security number on the tax-withholding forms.”

Supreme Court of Florida

[Sanchez-Torres v. State](#), SC19-211, SC19-836 (Mar. 12, 2020)

The defendant pled guilty to first-degree murder and robbery and waived the penalty-phase jury. This proceeding was an appeal from the denial of a Rule 3.851 motion and a habeas corpus petition in the Supreme Court. The Supreme Court affirmed the denial of the Rule 3.851 motion and denied the petition.

The Court rejected Sanchez-Torres’s claim that his waiver of the penalty-phase jury was not knowing, intelligent and voluntary due to alleged misadvice of counsel based on a lack of preparation. The alleged lack of preparation was repudiated by the 44 witnesses called by defense counsel at the penalty-phase hearing, which resulted in the trial court finding nearly two dozen mitigating circumstances.

Counsel was not ineffective for failing to move to suppress the defendant’s confession. This claim was based upon the assertion that the police had threatened the defendant’s younger sister with arrest, and that the defendant’s mother conveyed that threat to the defendant, the next day, prior to his confession. Apart from

conflicting evidence as to the existence of such a threat – the sister denied it and the officers denied it – the police would have had a lawful justification for threatening the arrest of the sister based on her known involvement in tampering with evidence, the defendant’s cell phone. Furthermore, the police had probable cause for the arrest of the defendant. The failure to file a motion to suppress does not constitute ineffective assistance of counsel when there is no probability that the motion would have been granted, or when there is other evidence of guilt upon which the trial could proceed.

Prior appellate counsel from the direct appeal was not ineffective for failing to argue that the sentencing judge should proceed, in a penalty phase, on the basis of a “presumption of life,” analogous to the presumption of innocence at a guilt-phase trial. Absent any existing case law to support the argument, the Supreme Court concluded that appellate counsel could not be deemed ineffective for failing to raise a novel argument.

[Pedroza v. State](#), SC18-964 (Mar. 12, 2020)

Language in prior Florida Supreme Court decisions addressing life sentences for juveniles in light of Graham v. Florida and Miller v. Alabama, suggested that resentencing was required if the sentence imposed on the juvenile exceeded 20 years and did not provide for early release based on the demonstration of maturity and rehabilitation. In Pedroza, the Supreme Court clarified language in its prior decisions of Kelly v. State, Henry v. State, and Johnson v. State, and receded from the holding in Johnson.

After addressing, clarifying and receding from the prior decisions at issue, the Court concluded:

We now recede from [Johnson] and hold that a juvenile offender’s sentence does not implicate *Graham*, and therefore *Miller*, unless it meets the threshold requirement of being a life sentence or the functional equivalent of a life sentence.

As Pedroza’s sentence of 40 years did not constitute a life sentence or its functional equivalent, it was not unlawful under Graham or Miller and Pedroza was not entitled to resentencing.

## Eleventh Circuit Court of Appeals

[Keohane v. Florida Department of Corrections](#), 18-14096 (Mar. 11, 2020)

In an action under 42 U.S.C. s. 1983, Keohane argued that the Department of Corrections “violated the Eighth Amendment’s prohibition on cruel and unusual punishment in its treatment of a transgender inmate’s gender dysphoria.” Some of the issues raised were rejected as moot, because DOC had repealed and replaced the challenged policies. The Court also rejected on the merits the claim that DOC rejected “‘social transitioning’ requests – in particular, to wear long hair, makeup, and female undergarments.”

## First District Court of Appeal

[Johnson v. State](#), 1D18-4509 (Mar. 12, 2020)

The First District affirmed a conviction for second-degree murder. The trial court did not abuse its discretion in permitting the State to introduce photos and diagrams showing the trajectory of bullets which wound up in a neighbor’s apartment. The charge before the jury was premeditated murder, and the photos and diagrams were found relevant to both premeditation and to negate self-defense. The opinion does not elaborate on how the trajectory related to these issues.

The evidence was sufficient as to the existence of ill will, spite, hatred or evil intent for second-degree murder:

Based on the evidence, a rational trier of fact could determine that Appellant did far more than impulsively overreact to an attack and his action evinced “a depraved mind regardless of human life.” The medical examiner determined that the victim’s wounds were “distant” and some of them created a “downward” pathway. Additionally, there were numerous serious wounds on the victim inflicted by a firearm and physical force. On the day of the incident, Appellant told multiple people that he had “messed up” and that he believed he had “hurt someone.” Appellant also made multiple phone calls but never attempted to call for help, during which time the victim’s loss of blood resulted in her death.

There was no error in denying a defense-requested instruction on the justifiable use of deadly force for second-degree murder and homicide. The instruction would have been misleading and confusing to the jury because it referred to an “impulsive overreaction,” which was not a defense to manslaughter. There was also no error in giving the initial-aggressor instruction, because there was some evidence in the record that the defendant may have provoked the use of force against himself:

Appellant consistently admitted that he and the victim had an argument prior to the incident. Appellant told the detective that the argument occurred because the victim was upset about her family. Appellant also told both his social worker and his friend that he and the victim had gotten into a fight. During his testimony, Appellant stated that he said something that “struck a nerve” with the victim and made her upset. Based on this evidence, the jury could determine that Appellant’s actions led to the altercation that caused the victim’s death.

Additionally, the defendant could have become the aggressor during a delay in the argument, after which neighbors heard gunshots. The trajectory of the shots and the victim’s injuries also supported this possibility.

The prosecutor’s argument did not misstate the law on heat of passion:

When talking about heat of passion, the State said, “if you think there is a heat of passion, you can find it’s not first-degree murder, but you can then get to second-degree murder and find it’s a second-degree murder but the heat of passion in that instance didn’t forgive it.” The State did not instruct the jury that the heat-of-passion aspect of excusable homicide does not apply to second-degree murder, but only that the jury could so find.

Alternatively, any error in the comment was harmless because the trial court properly instructed the jury on the relevant subjects.

The prosecutor did not misstate the burden as to self-defense, when arguing that “[w]e do not have to prove our case and in independently proving our case also prove that [Appellant] wasn’t acting in self-defense.” “The State did not misstate the

law because the State can overcome the burden of self-defense by inference in its case-in-chief.”

Other comments by the prosecutor did not improperly denigrate defense counsel or the defendant. Referring to one of the defendant’s comments as being “tone deaf” “was a permissible expression of inference that Appellant’s statements were inconsistent with the other evidence and was not a derisive comment made merely to offend.”

The prosecutor argued that the victim could not tell the jury what happened because she was dead. This was not an improper appeal to the sympathy of the jurors. The jurors were aware that the victim was dead and, in context, the comments “reminded the jury to rely on the evidence presented during the State’s case.”

Casper v. State, 1D18-420 (Mar. 11, 2020)

The First District reversed the denial of a Rule 3.850 motion and remanded the case to the trial court, pursuant to Gaymon v. State, 45 Fla. L. Weekly S52 (Fla. Jan. 23, 2020), for the purpose of empaneling a jury to make a determination as to dangerousness under section 775.082(10), Florida Statutes.

Second District Court of Appeal

Acevedo v. State, 2D18-844 (Mar. 13, 2020)

Convictions for multiple drug offenses were reversed because the prosecutor misstated “the standard and burden of proof for Acevedo’s defense of lack of knowledge of the illicit nature of the controlled substances.” The charged offenses were based on trafficking or possession of hydromorphone, oxycodone and alprazolam. The defense was that the defendant thought he possessed marijuana.

The prosecutor, in rebuttal, stated:

Nowhere in these jury instructions . . . does it say that he has to knowingly possess and know what the pills were.

. . .

Nowhere does it say that there is a fourth element in there that counsel wants you to believe that says that Jason Acevedo knowingly possessed hydromorphone.

He just has to knowingly possess a substance, and that the substance itself was tested and is hydromorphone. That is a complete and separate element we'd have to prove.

There were additional comments to the effect that the defendant did not have to know what the substance was; only that it was illicit.

Pursuant to legislative amendments in 2002, the lack of knowledge of the nature of the substance is an affirmative defense. However, if the defendant raises the defense, the State has to prove beyond a reasonable doubt that the defendant knew the illicit nature of the substance. The State therefore “misstated the law by insisting the jury need not determine that Acevedo knowingly possessed the illegal substances that were charged.”

[Jones v. State](#), 2D18-2306 (March 13, 2020)

One of the defendant's convictions, second-degree child neglect, was reversed due to insufficient evidence.

The infant victim sustained permanent injuries and brain damage. Evidence established that the defendant had been caring for the child throughout the day, while his wife was cleaning the house and running errands. When the father told the mother that there was something wrong, she said that they should call 911 and he urged her to wait for a while, which she did. Although the child appeared to improve slightly when water was splashed on face, after he spit up bloody milk, the mother called 911 and the child was taken to the hospital.

The State's theory of child neglect was based on the delay in calling 911. The evidence was insufficient because it did not demonstrate any causal link between the delays in seeking medical treatment and any injuries beyond those of the initial “fall” of the child, which the father attributed to his having dropped the child in the bath.

[DiLeonardo v. State](#), 2D18-3169 (Mar. 13, 2020)

Revocation of probation for violating the condition prohibiting possessing, carrying or owning a firearm or weapon could not be based on finding bullets in the defendant's apartment. And, the mere fact of an arrest does not suffice to violate the condition of probation which requires that the probationer live without violating any law.

[Sewell v. Blackman, Sheriff](#), 2D20-84 (Mar. 11, 2020)

The Second District granted a habeas corpus petition and found that the amount set for bail was excessive.

Sewell was charged with 305 counts of possessing, controlling or intentionally viewing child pornography, for which a monetary bond was set in the sum of \$1,000 for each count, plus \$500 for each of two misdemeanor charges. The defendant was 56-years old, unemployed and disabled, and living in his mother's home, while he received disability checks for \$770 a month. Those payments ceased upon his incarceration in jail. He had no savings and his mother had been paying his medical expenses. She testified that the most that she could afford and that she was willing to pay for was a bond in the range of \$10,000 to \$25,000.

The trial court found that the offenses charged rendered the defendant an unreasonable danger to the community. While the Second District agreed that possessing child pornography creates an economic incentive for the creation of such child pornography, that perniciousness is why the activity is illegal and it does not, in and of itself, constitute a justification "for effectively denying pretrial release by setting an exorbitant bail amount."

The case was remanded to the trial court with directions to make a new determination of reasonable bail and pretrial conditions.

Third District Court of Appeal

[C.S. v. State](#), 3D18-2491 (Mar. 11, 2020) (on motion for rehearing)

Evidence presented at trial was sufficient to demonstrate the value of stolen items in a grand theft case, where the State had to prove that the value exceeded \$300.

“In the instant case, the uncontroverted testimony of the victim established the purchase price of the telephone was \$700 and the SIM card, \$25.00. Therefore, the items bore an aggregate cost of more than double the statutory threshold. Both the phone and the SIM card were acquired a mere month before the theft. At the time the crime was perpetrated, the device was unsullied, fully operating, and in its original condition. Here, the State demonstrated ‘more than just the purchase price and that the phone was in working order.’”

[State v. Yero](#), 3D19-192 (Mar. 11, 2020)

An appeal by the State was dismissed because the order from which the appeal was taken was a nonappealable order. After the Third District, in a prior appeal, mandated a new sentencing hearing for a juvenile offender, the trial court vacated the prior sentence and ordered the new sentencing hearing. The State appealed from that order. Neither section 924.07(1), Florida Statutes, nor Rule 9.140(c)(1) contains authorization for an appeal from such an order. The Court rejected the State’s argument that the Third District should treat the appeal as a motion to enforce the Court’s prior mandate. The State had sought to prevent the resentencing as a result of Florida Supreme Court decisions regarding juvenile life sentences which had receded from prior cases upon which the Third District’s earlier opinion and mandate had relied.

Fourth District Court of Appeal

[Rivera v. State](#), 4D16-4328 (Mar. 11, 2020)

On rehearing, the Court withdrew its prior opinion, in light of the Florida Supreme Court’s recent decision in Love v. State, regarding the retroactivity of the 2017 legislative amendment to the burden of proof in stand your ground immunity hearings. Because the hearing on the immunity motion was held prior to the effective date of the legislative amendment, Rivera was not entitled to the benefit of the amendment, and the Fourth District affirmed the conviction and sentence.

[State v. Dixon](#), 4D18-3694 (Mar. 11, 2020)

The trial court erred in granting relief on a Rule 3.850 motion. First, the court granted relief as to a claim that was not asserted in the motion – that counsel was ineffective for not investigating competency and for not seeking a competency determination. Second, the defendant did not demonstrate prejudice. The relevant pretrial report from an expert did not find the existence of any mental health issues.

The report did not find the defendant incompetent. It described him as guarded and irritable, suffering from drug use and depression. Malingering could not be ruled out. At an evidentiary hearing, counsel testified that the defendant did nothing to make counsel believe he was incompetent. Counsel also chose not to submit the report in question to the court because counsel did not want to have the court see the reference to potential malingering.

#### Fifth District Court of Appeal

[Beato v. State](#), 5D19-1939 (Mar. 13, 2020)

Beato surrendered his passport as a condition of an appearance bond on a fugitive warrant. Once that bond was discharged, the court no longer had authority to retain the passport.

[Campbell v. State](#), 5D19-2054 (Mar. 13, 2020)

In an appeal from a judgment and sentence entered after a plea of nolo contendere, Campbell argued that the trial court failed to schedule a required hearing on competency. The Fifth District dismissed the appeal, without prejudice, because Campbell failed to file a motion to withdraw plea prior to commencing the appeal. As a result, the court lacked jurisdiction to entertain the appeal.

[Millan v. State](#), 5D20-13 (Mar. 13, 202)

A claim that a sentence was vindictive was not cognizable in a Rule 3.800(a) motion to correct illegal sentence.