

Case Law Update  
March 30, 2020  
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Supreme Court of the Untied States

Kahler v. Kansas, 18-6135 (Mar. 23, 2020)

The State of Kansas does not recognize an insanity defense based on the inability to distinguish right from wrong. A defendant can show that mental illness resulted in a lack of the requisite mens rea for the crime. The Supreme Court held that the failure of Kansas to recognize insanity based on the inability to distinguish right from wrong does not constitute a violation of due process. The recognition of such a defense is a matter for the individual states to determine. “No insanity rule in this country’s heritage or history was ever so settled as to tie a State’s hands for centuries later.”

Davis v. United States, 19-5421 (Mar. 23, 2020)

Davis argued that under the Sentencing Guidelines, the district court erred in imposing his federal court sentences consecutive to his state court sentences because the offenses were part of the “same course of conduct.” The Fifth Circuit Court of Appeals had refused to entertain the argument because Davis had not raised it in the district court. The Fifth Circuit did not engage in plain error analysis based on its conclusion that the issue was factual in nature and factual issues did not qualify as plain error.

Most other Circuit Courts of Appeals had disagreed with the Fifth Circuit, as did the Supreme Court. Rule 52(b), Federal Rules of Appellate Procedure, which sets forth the plain error standard of review, “does not immunize factual errors from plain-error review. Our cases likewise do not purport to shield any category of errors from plain-error review.”

Eleventh Circuit Court of Appeals

United States v. Eason, et al., 16-15413 (Mar. 24, 2000)

The Court held that Hobbs Act robbery is not a “crime of violence” under the Sentencing Guidelines, s. 4B1.2(a).

The Court examined the statutory elements of Hobbs Act robbery and concluded that “a person can commit Hobbs Act robbery without using, attempting to use, or threatening to use physical force ‘against the person of another.’” That is because the offense is defined as including, *inter alia*, threats of force to “person or property.” Thus, under the elements clause of the career offender provision of the Sentencing Guidelines, Hobbs Act robbery did not qualify as a crime of violence.

The career offender provision also includes “enumerated offenses” as part of the definition of a crime of violence, and the list of enumerated offenses includes “robbery” and extortion. That, however, did not include Hobbs Act robbery. In making this determination, the Court looked beyond the label of the offense at issue and determined whether the conduct necessarily proven for the predicate for the defendant’s conviction under the Hobbs Act was “a natural equivalent to the offense as envisioned by the Guidelines drafters.” “If the least of the acts the statute criminalizes satisfies the generic definition of the offense, then the statute qualifies as the enumerated offense; if not, then the statute does not qualify.”

Hobbs Act robbery is broader than generic robbery because it includes threats of force to property. Extortion under the Hobbs Act likewise includes threats of force to property. Because the generic form of the offense is narrower than that set forth in the Hobbs Act, the Hobbs Act offense does not qualify as a crime of violence under the career offender provision of the Sentencing Guidelines.

#### [United States v. Goldman](#), 18-13282 (Mar. 25, 2020)

In 1980, Mel Fisher, in a salvaging operation, discovered, among other items, a gold ingot, referred to as Gold Bar 27, which he subsequently donated to a museum he established in Key West. In 2010, Goldman, a lookout, and a codefendant, stole the gold bar.

Goldman subsequently went to trial on charges of conspiracy to commit a crime against the United States and theft of a major artwork. His codefendant, Johnson, pled guilty, and agreed that Gold Bar 27 was worth approximately \$556,000. At trial, Goldman stipulated that the bar was worth in excess of \$100,000. He was convicted as charged.

The museum was paid \$100,000 by an insurance company. The district court entered a restitution order in the sum of more than \$580,000, after an evidentiary hearing on the issue of restitution. The Sentencing Guidelines include a provision

which enhances the sentence based upon the value of stolen cultural-heritage resources.

Goldman challenged the amount of restitution on appeal. The Eleventh Circuit did not reach the issue of proper calculation under the Guidelines provision relevant to stolen cultural-heritage resources. Rather, it concluded that any error in the calculation was harmless, as the district court had announced that it would have imposed the same sentence regardless. As part of this analysis, the Court looks to the issue of whether the sentence imposed, 40 months in prison, followed by three years of supervised release, based upon a Guidelines range of 51-63 months in prison, was substantively reasonable.

Had the gold bar been valued between \$95,000 and \$150,000, as argued by Goldman, the guidelines range would have been 27-33 months. Even though the guidelines took into account the value of the stolen item, other factors were relevant as well, such as the deprivation to millions of museum visitors of the museum centerpiece exhibit. The 40-month sentence was well below the 51-63 month range. The sentence was not outside the reasonable range of sentences dictated by the facts of the case.

As to the challenge to the restitution itself, the Court reaffirmed prior decisions holding that “where the loss is of a unique artifact for which market value cannot fully compensate, courts must use replacement cost in determining restitution.” At the evidentiary hearing, a witness testified that the value of the bar was \$556,000, but “absent any evidence of her training in valuing artifacts or of any explanation of the Museum’s point system [of valuation],” that was not an appropriate basis for the district court’s conclusion.

The case was remanded for a new restitution hearing. The Eleventh Circuit noted relevant factors to consider: the melt value of the bar; sales of comparable bars; a premium based on the fact that it came from a vessel of historic significance, which sank in the 17<sup>th</sup> century; and a premium for its status as the centerpiece of a museum.

#### Pitch v. United States, 17-15016 (Mar. 27, 2020) (on rehearing en banc)

In an en banc decision, the Court addressed the issue of whether a district court may “order the release of grand jury materials in circumstances not explicitly covered by Rule 6(e) [of the Federal Rules of Criminal Procedure].” The Eleventh Circuit concluded that Rule 6(e) provides the exhaustive list of circumstances “and

that district courts do not possess inherent, supervisory power to authorize the disclosure of grand jury records outside of Rule 6(e)(3)'s enumerated circumstances." In so holding, the Court overruled its own prior decision to the contrary, from In re Petition to Inspect & Copy Grand Jury Materials (Hastings), 735 F. 2d 1261 (11<sup>th</sup> Cir. 1984).

In this case, the district court had ordered release because the materials related to a case of historic significance, a murder of two African-Americans by lynching in the 1940's.

The Court noted that other Circuit Courts of Appeals have split on the issue of discretion for non-enumerated circumstances. Several judges of the Eleventh Circuit dissented from portions of the Court's opinion, and one judge dissented as to the entirety of the opinion.

### First District Court of Appeal

Johnson v. State, 1D18-4528 (Mar. 26, 2020)

The trial court did not err in denying a request for a jury instruction on a permissive lesser-included-offense of animal cruelty on the charge of aggravated animal cruelty. The information charging aggravated animal cruelty did not set forth all of the elements of the lesser offense of animal cruelty. A party is entitled to an instruction on a permissive lesser included offense if the charging document alleges all of the elements of that lesser offense and if there is evidence at trial to support the lesser offense.

The information alleged that the defendant "did intentionally and unlawfully commit an act to an animal, a pit bull puppy[], which resulted in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or caused the same to be done. . . ." The elements of animal cruelty are that the accused a) "unnecessarily [overloaded] [overdrove] [tormented] [mutilated] [killed] an animal", b) "deprived an animal of necessary [sustenance] [shelter]," and c) "carried an animal in or upon a vehicle [or otherwise] in a cruel or inhumane manner."

The trial court erred by imposing certain discretionary fines and surcharges without individual pronouncement. "Although Appellant consented to waive the reading of the statutory authority, he did not waive the reading of the specific pronouncement of each discretionary fine. The trial court also erred by failing to

specifically pronounce the discretionary fines at the hearing or elaborate on the composition of the lump sum.”

[Tedder v. State](#), 1D18-5292 (Mar. 26, 2020)

Graham v. Florida does not apply to sentences imposed on individuals committing offenses if they are 18 years of age or older.

[Holmes v. State](#), 1D19-969 (Mar. 26, 2020)

A Rule 3.853 motion seeking DNA testing was properly denied as it was conclusively refuted by court records attached to the order denying the motion. “Here, Appellant fails to carry his burden of demonstrating he would be exonerated, or his sentence mitigated, by additional DNA testing. The records attached to the order on appeal document Appellant’s DNA matched that of the skin located in the victim’s mouth, and the victim identified Appellant as the perpetrator in court. Appellant fails to establish how the 2010 DNA test was inconclusive, especially considering the statistical value of the match [ 1 in 490 billion].”

[Kellond v. State](#), 1D19-1288 (Mar. 26, 2020)

After receiving conflicting reports from experts regarding the competency of the defendant to stand trial, the court failed to conduct a competency hearing. The case was remanded for further proceedings, including a retroactive determination of competency at the time of the trial, if possible.

[Goldson v. State](#), 1D18-3080 (Mar. 26, 2020)

Appellate counsel from a prior direct appeal was not ineffective for failing to challenge the imposition of a sentence of the defendant as a dangerous sexual felony offender under section 794.0115, Florida Statutes.

Although the State did not charge the defendant under section 794.0115, the State “orally advised Petitioner during a plea offer prior to jury selection that if he did not accept the plea he would be subject to a 50-year mandatory minimum as a DSFO.” This was sufficient notice to impose a DSFO sentence. The defendant had been charged under section 794.011(3) (sexual battery with the use of actual physical force likely to cause serious personal injury), and the last clause of that subsection specifically references sentencing under section 794.0115, the DSFO statute. The

DSFO statute, in turn, applied to defendants convicted of sexual battery under section 794.011(3) if serious bodily injury to the victim ensued.

[State v. Scharlepp](#), 1D18-4833 (Mar. 24, 2020)

Under section 409.920(2)(a)(2), Florida Statutes, it is an offense to “knowingly make, cause to be made, or aid and abet in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program.” The trial court dismissed charges, finding that this statute was unconstitutionally vague and further found that it entailed an unconstitutional delegation of legislative authority. The First District disagreed and reversed the dismissal.

The legislation vests the Florida Agency for Healthcare Administration with authority to adopt “any rules necessary to comply with or administer [the relevant statutes]” and “all rules necessary to comply with federal requirements.” “AHCA’s power, through its rulemaking authority, is limited to those rules necessary and that comply with funding and federal guidelines.” “To require the Legislature to enact such rules, regulations, and procedures in the complex Medicaid system would be an insurmountable task.”

The First District further rejected the vagueness challenge, finding that the statute “clearly provides notice that an ordinary person may understand the acts prohibited.” The statutory language encompassed “the rules, regulations, and conditions as set forth in the [Agency] Handbook.” That included FAC Rule 59G-4.199(2), which states: “[a]ll Medicaid-enrolled mental health targeted case management providers must be in compliance with the Florida Medicaid Mental Health Targeted Case Management Coverage and Limitations Handbook.”

[Bryant v. State](#), 1D19-4654 (Mar. 24, 2020)

A pretrial ruling that the defendant was competent to stand trial could not be reviewed through a petition for writ of certiorari, since the defendant had an adequate remedy by way of appeal after any ensuing conviction.

[Carpenter v. State](#), 1D19-105 (Mar. 24, 2020)

A claim that the trial court applied the wrong standard when ruling on a motion for new trial was not preserved for appellate review.

The motion for new trial set forth a pro forma recitation of the grounds for a motion for new trial as included in Rule 3.600, Fla.R.Crim.P., including that the verdict was contrary to the weight of the evidence, that it was contrary to law, and that the trial court erred in denying the motion for judgment of acquittal. Without hearing any in-court argument on the motion, the judge denied it, stating: “I will rely on the previous rulings made during the course of the trial.”

As to a claim that the verdict is contrary to the weight of the evidence, reliance on a prior ruling for denying a motion for judgment of acquittal is not the correct standard, as the motion for judgment of acquittal looks to the sufficiency of the evidence, whereas the motion for new trial puts the judge in the role of a juror, considering credibility of witnesses. Here, the trial court, when ruling, did not refer to any standards, and the motion included multiple claims. As the defendant did not object or seek clarification, the claim was not preserved and the trial court’s ruling did not constitute fundamental error.

#### Second District Court of Appeal

[T.C.C. v. State](#), 2D18-4664 (Mar. 27, 2020)

The Second District reversed adjudications for carrying a concealed firearm without a license and possession of a firearm by a minor. The trial court erred in failing to suppress the juvenile’s confession because the State failed to prove the corpus delicti for either offense.

T.C.C. approached three officers at a restaurant and said that three males had just chased and robbed him. The officers detained three boys who then said that they were the victims. A bag of ammunition was found on one of them. When T.C.C. saw the three boys, he ran through a parking lot, but was apprehended. The officer lost sight of him for three seconds. After he was seen fleeing from bushes, a firearm was found in those bushes, about 50-100 yards from where he was apprehended.

“To prove corpus delicti, therefore, substantial evidence independent of T.C.C.’s confession had to establish T.C.C.’s control of the firearm found in the bushes.” The evidence was not sufficient to do that. The bushes were in a public area and there was no evidence as to the condition of the firearm or how long it had been in the bushes. Mere proximity was not sufficient.

[Fields v. State](#), 2D18-5067 (Mar. 25, 2020)

The trial court erred in denying a motion to suppress evidence because there was no reasonable suspicion to detain Fields or to arrest him. As Fields entered a negotiated plea to the charges (resisting an officer and loitering and prowling) and the suppression motion was dispositive of the case, the Court further ordered that he be discharged.

A woman placed a 911 call, stating that she saw a man at the front door of some neighbors' house, turning the doorknob, and that he did not live there. She provided a description of the man. Officers arrived shortly after, and found the defendant walking, about two blocks away. At the suppression hearing, the caller testified and acknowledged that in the 911 call she said she saw the man jiggling the doorknob, but that she could not remember seeing and could not state that that happened when testifying. When the officer approached the defendant, he was walking around. The defendant did not respond to questions about what he was doing in the area. The defendant did not comply with the officer's directions to keep his hands out of his pockets. As the officer approached, the defendant walked to keep greater distance between them.

A witness for the defense testified that the defendant was a cousin who was visiting from out-of-state, and that the witness's home was around the corner from the residence where the 911 caller observed someone. The defendant had left his cousin's residence to go to a store and had not returned.

The Second District found that the 911 caller had a mere "hunch." The Court distinguished someone trying to "turn" a door knob, as reported in the call, from someone "jiggling" the door knob, the language used at the suppression hearing, which contained additional inferences and which could not be relied upon by the trial court because the officer at the time had never heard any reference to "jiggling."

The Court did not have to reach the loitering and prowling issue because of its finding that there was no reasonable suspicion to detain the defendant. Furthermore, loitering and prowling is a misdemeanor, and reasonable suspicion must be based on an officer's personal observations. The officer's observations did not establish anything more than "vague suspicion," which was insufficient.

Croft v. State, 2D18-5109 (Mar. 25, 2020)

The trial court, with the State's agreement, granted a Rule 3.850 motion in which the defendant, a juvenile at the time of the murder he committed in 1983, sought resentencing pursuant to decisions of the Supreme Courts of the United States and Florida regarding juvenile life sentences. After the granting of the Rule 3.850 motion, and the scheduling of a resentencing hearing, the trial court vacated the order in light of new decisions from the Florida Supreme Court which receded from that Court's earlier decisions.

The trial court lacked jurisdiction to vacate its earlier order granting the 3.850 motion based on an untimely motion for rehearing by the State, more than two years after the order granting the motion. The Second District noted a distinction between orders granting Rule 3.850 motions and orders granting Rule 3.800(a) motions to correct sentences. Orders granting Rule 3.850 motions are final, appealable orders; orders granting Rule 3.800(a) motions are not.

Townsend v. State, 2D19-2235 (Mar. 25, 2020)

The trial court erred in denying a motion to suppress.

A robbery was committed in a Walmart parking lot and the suspect drove away in a maroon Buick, with the victim's credit cards. Officers were investigating an unrelated report of a stolen vehicle when they observed this maroon Buick, parked outside a house. Frank Murray exited the house and approached the officers, who were waiting for backup. Murray stated that the driver of the Buick, later identified as Carlos Wiggins, was inside the house; Murray then walked away.

Another car then drove up to the house, and Townsend exited, checked the mailbox, and went inside. When Murray started walking back to the house, the officers were concerned that he might alert Wiggins to their presence. One officer stopped Murray. Another went to the back of the house and observed yet another person trying to crawl out of a window. One officer called for all occupants to exit the house. In addition to handcuffing Wiggins, one officer patted Townsend down and discovered a firearm. Townsend further confirmed that he was a convicted felon.

There was no reasonable suspicion to support the pat-down of Townsend. No weapon had been reported in the Walmart robbery, and the officer did not have any

reason to believe that Townsend was the perpetrator of that offense. He was not the one trying to escape from the window; he had not been uncooperative.

### Third District Court of Appeal

#### Kimbrough v. State, 3D19-1173 (Mar. 25, 2020)

The trial court erred by considering prior charges for which the defendant had been acquitted when imposing sentence. When pronouncing sentence, the court stated: “As a juvenile you were adjudicated for resisting with violence. You were charged and went to trial, although you were acquitted at trial of another incident with two counts of resisting an officer. . . .” This language raised a “reasonable question as to whether the trial court relied on the acquitted charges. . . .” On remand, the resentencing was mandated to be conducted by a new judge.

### Fourth District Court of Appeal

#### Green v. State, 4D18-2853 (Mar. 25, 2020)

The defendant entered an open plea of no contest to the court to multiple offenses. The sentencing scoresheet erroneously included one offense that was beyond the scope of the plea. Through a Rule 3.800(b) motion, Green sought, alternatively, vacating of all convictions and sentences, or a striking of the conviction and sentence for the one count at issue, plus resentencing on all other counts. The Fourth District held that the conviction and sentence for the one count should be vacated, and that resentencing was required for all other offenses. On direct appeal, a scoresheet error requires resentencing when it is not clear that the trial court would have imposed the same sentence but for the scoring error.

#### Woods v. State, 4D18-3778 (Mar. 25, 2020)

The Court held that “merely objecting to the sufficiency of proof of a prior offense on a scoresheet, rather than disputing its accuracy or truth, does not obligate the State to introduce corroborating evidence of the conviction.” The defense had objected when the State introduced a certified prior conviction for a New Jersey burglary. The defense did not present any evidence to refute the existence of that burglary conviction. Only if the State contests the truth of the prior conviction is the State required to corroborate the offense with competent evidence. Regardless of the inadequacy of the defense’s objection, the State did present such competent evidence through a certified copy of the conviction. The trial court’s reliance on

hearsay from an NCIC report was harmless in light of the certified copy of the conviction.

[F.L.P. v. State](#), 4D19-362, 4D19-697 (Mar. 25, 2020)

The trial court erred by departing from DJJ's recommendation of probation and ordering detention in a non-secure facility. The trial court must provide reasons for the departure, identifying significant information that DJJ overlooked, misconstrued or failed to sufficiently consider, with regard to the child's rehabilitative needs and risks to the public of an unrehabilitated child. The trial court further errs "if the DJJ only recommends probation and it commits the juvenile without requesting a DJJ restrictiveness recommendation for the commitment."

[Mook v. State](#), 4D19-1422 (Mar. 25, 2020)

The trial court erred in summarily denying one claim in a Rule 3.850 motion. The defendant alleged that trial counsel was ineffective for advising the defendant to reject a reasonable plea offer, claiming that counsel stated that the State could not prove premeditation for attempted first-degree murder, and that the defendant would have accepted the plea offer but for counsel's misadvice. The trial court concluded that counsel's alleged advice had been a reasonable strategic decision. An evidentiary hearing was needed to determine whether the alleged advice was rejected based on a reasonable strategic decision.

[Miller v. State](#), 4D19-2347 (Mar. 25, 2020)

The trial court erred by failing to grant the defendant additional time in which to file an amended Rule 3.850 motion.

The trial court had denied the motion and provided 60 days in which to file an amended motion. Miller alleged that he did not receive that order, and once he became aware of it, he filed a motion to reinstate it and to grant additional time. While that motion was pending, and within the two years for filing a Rule 3.850 motion, he filed the amended motion. The trial court erred by denying the motion and the case was reversed and remanded for the trial court to rule on the merits of the motion.

## Fifth District Court of Appeal

### Weeks v. State, 5D18-3612 (Mar. 27, 2020)

Double jeopardy principles precluded convictions for four counts of unlawful interception of wire communications.

The State, without knowledge or consent of the other participants, recorded three separate phone conversations. “One phone conversation was a conference call with four other individuals, a second phone conversation involved two other individuals, and a third call was a phone call with a single individual.” The State obtained convictions for seven counts; the defense argued that double jeopardy barred more than three.

The relevant statute under which the offenses were charged made no reference to the number of participants in the communication. The allowable unit of prosecution was the call itself, not the number of participants.

### Bici v. State, 5D19-798 (Mar. 27, 2020)

The trial court erred in considering impermissible factors at sentencing, and the case was reversed and remanded for resentencing before a different judge.

The defendant was convicted of DUI manslaughter and DUI with serious bodily injury. The State objected to the request for a downward departure and presented evidence of the existence of a pending DUI charge at the time of the commission of the instant offenses. The trial court denied the request for a downward departure and referred to the defendant’s failure to take responsibility, further finding that the filing of the pretrial motion to suppress and other things done during the course of the litigation on this case were inconsistent with the taking of responsibility.

The trial court “impermissibly equated [the defendant’s] exercise of her constitutional rights as a lack of remorse.”

### Croft v. State, 5D19-2266 (Mar. 27, 2020)

Croft appealed convictions for aggravated battery with a deadly weapon or great bodily harm. The trial court erred in denying a request for an instruction on the justifiable use of non-deadly force.

The jury heard conflicting evidence regarding an altercation. The defendant was helping his sister move furniture out of her apartment. A fight ensued between he defendant and the sister's boyfriend regarding the dismantling of furniture. Croft testified that the boyfriend was the aggressor, that Croft responded with a screwdriver. The boyfriend presented contrary testimony and said that Croft attacked him with a knife, stabbing him in the finger and side, resulting in one stitch to the finger.

Counsel sought the instruction on justifiable use of non-deadly force based on the evidence as to the alleged injuries, as they were not extensive, further arguing that there was no evidence of the risk of death or great bodily harm. "When the type of force used by a defendant is clearly deadly or non-deadly as a matter of law, only the applicable instruction should be given. . . . However, when there is any evidence presented at trial that supports an instruction on either deadly or non-deadly force, it is error not to give it." Under the facts of this case, it was error to conclude that only the deadly force instruction should be given.

[Bradley v. State](#), 5D20-391 (Mar. 27, 2020)

The trial court erred by denying a Rule 3.850 motion as a successive motion without attaching court records to the order demonstrating that it was an improper successive motion.