

Case Law Update
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Supreme Court of the United States

[Ramos v. Louisiana](#), 18-5924 (Apr. 20, 2020)

The States of Louisiana and Oregon both permit convictions at trial based on 10-2, nonunanimous verdicts. The Supreme Court held that the Sixth Amendment requires a unanimous verdict to convict for a serious offense.

Supreme Court of Florida

[Archer v. State](#), SC19-841 (Apr. 23, 2020)

Archer appealed the denial of a successive Rule 3.851 motion. Among other holdings, the Court found that Archer's Hurst claim was without merit "as his guilt-phase jury found him guilty of the facts that establish the basis for one of the aggravating factors on which the sentencing court relief to determine that he is eligible for the death penalty."

Archer presented a claim of newly discovered evidence, arguing that the release of codefendant Barth from prison on parole constituted such newly discovered evidence where the jury was told in the penalty phase that Barth would serve a life sentence. First, the claim was inaccurate, because Barth was not released on parole; he was resentenced pursuant to the subsequent Supreme Court decisions regarding juvenile life sentences.

Second, even if Archer's claim in the motion were accepted as true, its denial was still proper. The motion alleged that "after Barth testified against Archer and another codefendant, he 'was permitted to plead guilty for first-degree murder and receive a life sentence in which he would be eligible for parole after 25 years.'" This was a matter of public record for decades and could have and should have been exercised with due diligence long ago and did not qualify as being new discovered evidence.

First District Court of Appeal

[Griego v. State](#), 1D19-1752 (Apr. 23, 2020)

The trial court did not err in treating a Rule 3.850 motion as a Rule 3.800(c) motion. The motion asserted that it was based on paragraph 6 of the plea agreement which stated: “I hereby waive or give up any right to request a modification of my sentence within the limits of this agreement absent a substantial change in circumstances occurring after sentencing.” The motion was accompanied by an affidavit from the victim’s father requesting clemency for the defendant. The relief sought through the motion was a reduction of sentence.

As the motion was properly treated as one under Rule 3.800(c), the trial court lost jurisdiction to entertain such a motion 60 days after the sentence became final in March, 2010.

[Jackson v. State](#), 1D18-1603 (Apr. 21, 2020) (on motion for rehearing)

Jackson was convicted of first-degree murder. He was alleged to have sold heroin to the victim and the victim died of an overdose within hours. On appeal, he argued that the trial court erred by excluding “evidence that someone else sold the victim the lethal dose of heroin.” The First District affirmed the conviction.

Jackson’s theory of defense was that the victim had used and survived the heroin which Jackson sold, and then obtained more heroin from another seller, later that day, and died from that heroin. Jackson sought to introduce a text message that the victim sent him shortly after the sale of heroin by Jackson, in which the victim said, “Damn, my boy got some fire, boy.” The trial court excluded this as hearsay, because it was being offered to prove the truth of the matter upon which Jackson was relying – that it referred to the heroin that Jackson sold the victim, and showed that the victim had used it and survived. Jackson argued that the text was only a comment on the quality of the heroin. The quality of the heroin, however, was not an issue in the case.

Jackson also sought to introduce evidence that he received \$40 for the heroin and that he, Jackson, obtained it from a prior dealer, who was the ultimate source. This was deemed irrelevant, as Jackson still remained the supplier to the victim and that status is not excused by the existence of a prior source in the chain of supply.

[Cruz-Cedeno v. State](#), 1D19-2170 (Apr. 21, 2020)

During a trial on charges of armed robbery and shooting a firearm at or within a building, a federal deputy marshal referred to the violent offenders task force that he belonged to and their pursuit of “at large violent offenders.” An objection to that evidence was properly overruled. The deputy was “testifying about his task force’s mission and the persons it was designed to apprehend in general. Indeed, he prefaced his description of his unit’s purpose by stating, ‘Speaking about my task force in general. . . .’” This was not a statement about the defendant’s character or prior bad acts.

Second District Court of Appeal

[Green v. State](#), 2D18-3587 (Apr. 24, 2020)

In an appeal from convictions for possession of cannabis and drug paraphernalia, the Court held that the trial court erred in denying a motion to suppress evidence.

Green’s vehicle was stopped for a broken taillight. An officer approached, smelled marijuana, searched the vehicle, and arrested Green. The broken taillight emitted white light. The officer testified that white light is unsafe because vehicles uniformly have red light from the brake light, and that drivers may think that white light indicates a vehicle approaching them.

The statute under which the defendant was charged required proof that the vehicle was “in such unsafe condition as to endanger any person, which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter.”

Provisions of chapter 316 do “not prohibit the operation of a vehicle with a nonfunctioning light where there are two other fully operational lights.” Failing that, in order to have a lawful stop of the vehicle, the broken taillight must have posed a safety hazard. The testimony about the significance of white light being emitted did not satisfy the State’s burden. It was 8:48 a.m. when the vehicle was stopped. The defendant’s testimony about two other brake lights being operational was not rebutted. Nor did the State rebut Green’s testimony that some portion of the broken light was covered with red tape and that some red light was also emitted.

[State v. Brooks](#), 2D18-4300 (Apr. 24, 2020)

The trial court erred in suppressing evidence and dismissing the charges after the suppression of evidence, as the police had probable cause to arrest the defendant for operating an unregistered vehicle.

Police were patrolling a neighborhood looking for a “late-model white sedan that was involved in a series of assaults and robberies.” Brooks was driving a matching van in an apartment complex parking lot. He was seen “circling slowly through the parking lot at a time when many people would usually be leaving for work.” He was followed by undercover officers as he did the same thing in another complex’s parking lot.

Patrol officers were contacted. The tag on the vehicle could not be read because it was partially covered by a piece of plastic, with moisture in between the plastic and tag making it unreadable. Brooks was stopped for this traffic infraction. The tag was then discovered to be a temporary Texas tag that had expired four days earlier. A VIN search showed that the vehicle was not registered in Texas or elsewhere. Brooks was then advised that it was illegal to drive an unregistered vehicle. Brooks was not cited and said that he would get a ride from his sister.

Undercover officers continued to observe and, after the patrol officers left, Brooks got back into the car and started driving away. The patrol officers returned and arrested him for operating an unregistered vehicle. A pat-down search disclosed cocaine in Brooks’ pocket. After the car was impounded, a firearm was discovered, and Brooks was a convicted felon and not permitted to possess a firearm.

The trial court had concluded that the expiration of the tag was proof that it had been registered somewhere and that Brooks could not be arrested for operating an unregistered vehicle. Failure to register a vehicle is second-degree misdemeanor. At the time of the stop, on the basis of three separate computer searches that were done, the officers had probable cause to believe that the vehicle was not registered.

[Tate v. State](#), 2D19-2248 (Apr. 24, 2020)

The summary denial of one of several claims in a Rule 3.850 motion was reversed to provide the defendant with leave to amend.

Tate was convicted of felony murder and aggravated child abuse. One of the claims in the 3.850 motion alleged ineffective assistance of counsel for failing to

move in limine to exclude two baby wipes the State intended to introduce. Although they had the infant's blood on them, Tate alleged that the infant did not suffer any injuries on the date of death that involved bleeding or broken skin. The Second District accepted that these allegations, if true, could show that counsel was deficient. The motion, however, was insufficient with respect to the prejudice prong of a claim of ineffective assistance, as it did not allege how the State used the wipes or what arguments the State made on the basis of them. Tate was entitled to an opportunity to amend the claim. The fact that, as the trial court found, there was sufficient evidence of guilt, was not the correct standard for determining prejudice. Rather, the test is whether there is a reasonable probability that the outcome of the case would have been different but for counsel's failure to object.

Another claim of ineffective assistance related to the jury's question concerning "access to court transcripts of witness testimony." The judge advised counsel that it was the court's police to respond only to the question asked, and that the judge intended to advise the jury that there were no transcripts and that the jurors would have to rely on their own recollections. There were no objections to this response. On direct appeal, the defendant argued that it was fundamental error not to advise the jury of the possibility of reading back witness testimony. The trial court, when denying the claim, found that the defendant could not prove prejudice as a result of the failure to object because the appellate court, on direct appeal, had already found that the error did not rise to the level of fundamental error. The proper standard, as with the other claim, was whether a deficiency of counsel had a reasonable probability of affecting the outcome of the case – a different standard than that of fundamental error, which asks whether the error reaches "down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error."

Even under the correct standard for determining prejudice, Tate's claim failed. Tate was arguing that counsel's error affected the outcome of the direct appeal. The prejudice question, however, goes to whether counsel's error affected the outcome of the trial, and Tate did not present such an argument. Furthermore, based on the record, it was possible that had there been an objection, the judge would have given a correct instruction regarding reading back testimony. The trial court would also have had discretion to deny requests for reading back testimony. Any allegation of prejudice on this claim was speculative.

Fourth District Court of Appeal

[Williams v. State](#), 4D18-1128 (Apr. 22, 2020)

Dual convictions for assault and attempted robbery resulted in a double jeopardy violation. The assault verdict was returned as a lesser-included offense of the charged offense of burglary with a battery. The allegations in the information made it clear that the assault referred to in the burglary charge was an alternative means of force for the commission of the attempted robbery.

[Torrez v. State](#), 4D18-1277 (Apr. 22, 2020)

Torrez appealed a conviction for second-degree murder. At trial, the State introduced cadaver dog evidence – dog detection of human remains. When the victim’s body could not be located after indicia of having been attacked, the dog was used and reacted positively to locations in a vehicle that was being searched. The trial court conducted an extensive Daubert inquiry, and the evidence regarding the dog’s training, its accuracy, and the qualifications of the handlers, are extensively detailed in the Fourth District’s opinion. The Fourth District stated that this was an issue of first impression in Florida courts.

Torrez argued that under Daubert, the evidence was not sufficiently reliable. Reviewing prior decisions applying Daubert, the Fourth District stated that “dog detection evidence must be shown to be reliable from experience.” The “scientific basis for dog tracking evidence” did not have to be “explained before” it could be admitted. The evidence was properly admitted. “Florida case law involving dog scent evidence accords with the proposition that courts need not consider the science underlying testimony related to cadaver dog evidence.” The ability of some dogs, when properly trained, to detect human odors, was commonly known, and its reliability was readily understood by a jury.

In this case, the appellate court concluded that the officer was qualified to work with the dog and interpret her responses. He had extensive training, was certified, and regularly conducted training with the dog. The dog was sufficiently trained and accurate. This included several recertifications, with “excellent proficiency ratings exceeding ninety-one percent” and only “one instance of a false positive with no similar incidents since remediation.” There was also substantial evidence corroborating the scent reaction. This included bloodstain evidence, the victim being missing, evidence suggesting that the defendant’s vehicle would have been used to move the victim; alert from a second dog with a handler from a different

agency. The Fourth District further found that the relevance of the evidence exceeded its prejudice.

[Dubon v. State](#), 4D18-1867 (Apr. 22, 2020)

The Fourth District affirmed convictions for first-degree murder and kidnapping, and remanded for further competency proceedings.

The trial court did not abuse its discretion in excluding defense-proffered photographs showing the defendant in Honduras prior to the time of the murder. The defense offered these as corroboration of an alibi defense. These photos preceded the murder by months and were therefore not relevant.

An argument by the prosecutor in closing argument was not error, let alone fundamental error. The appellant argued that the following was an improper argument that a defense witness was lying for the defendant and that the defendant enlisted another person to do the same:

You weigh the State's case with the defense case. Do I believe his cousin, who clearly has an interest again going to weighing the evidence, back to weighing the evidence. His cousin. It's family. And then gets [the project manager]. Come. Come with me to the States. She testified.

This was proper argument to the jury that it should weigh the evidence to determine the credibility of the witness. "The prosecutor merely argued that appellant's cousin had an interest in how the case was decided because he was family, and that he got the project manager to come with him to the United States to testify."

A police officer was asked by the prosecutor whether you can "still be a principal to murder by what he did," and the officer responded affirmatively. An objection failed to state any grounds and was therefore insufficient to preserve the issue for appeal. It was error to have the witness render an opinion applying a legal standard to the facts of the case. The error, however, did not rise to the level of fundamental error. It was a brief comment; there was no issue as to whether the conduct alleged would constitute being a principal as the defendant asserted an alibi defense; and the court instructed the jury on the law of principals.

After an expert evaluated the competency of the defendant prior to trial, the court failed to hold an adequate competency hearing. The trial court referenced the prior competency evaluation at a hearing when the defendant was absent and was represented by stand-in counsel, who stated that appointed counsel might not want to stipulate to competency, although stand-in counsel was prepared to stipulate. Stand in counsel stated: “The Court ordered an evaluation the last time we were here. We’ve reviewed that. It says that he is competent and I would be prepared to stipulate.” The court, on the basis of that stipulation to the evaluation found the defendant competent. Based on another evaluation prior to sentencing, the court found the defendant competent at that time.

The trial court failed to make an independent determination of competency prior to trial. “There was no agreement between the parties to allow the judge to decide the issue of competency on the basis of the written report alone. It is unclear from the record whether the trial court even reviewed the evaluation.” The Fourth District temporarily remanded the case to the trial court for a nunc pro tunc determination of competency at the time of the trial.

The defendant argued that it was fundamental error to convict the defendant of armed kidnapping based on another person’s possession of a weapon during the commission of the crime. Although a conviction cannot be reclassified to a higher degree based upon the possession of a weapon by another principal to the crime, the kidnapping offense was not reclassified in this case. The judgment of conviction referenced “armed kidnapping,” but the degree of offense noted on the judgment of conviction was for a first-degree felony, the correct degree absent reclassification.

The defendant was 16-years old at the time of the offenses and the trial court complied with the juvenile sentencing statutes, sections 921.1401 and 921.1402. The jury did not make a determination that the defendant actually killed, intended to kill or attempted to kill the victim. The court was thus required to sentence the defendant under section 775.082(1)(b)2. The court, at the sentencing hearing, did not indicate whether the defendant was being sentenced under 775.082(1)(b)2 or 775.082(1)(b)1. However, there was nothing in the record suggesting that the court sentenced the defendant under section 775.082(1)(b)1. The trial court did not make its own findings that the defendant actually killed, intended to kill or attempted to kill. The State never argued that the defendant should receive a sentence in excess of 40 years. The trial court imposed a life sentence. Furthermore, any error was harmless because the trial court commented that a life sentence was appropriate, and that statement showed that the court would have imposed the same sentence under either of the two statutory provisions. Under 775.082(1)(b)2, the court “may”

impose a life sentence if it finds the sentence to be appropriate based upon a consideration of all of the relevant factors. Under 775.082(1)(b)1, the life sentence is mandatory if it is deemed appropriate based upon a consideration of the relevant factors.

Several other juvenile sentencing issues under the same statutory provisions are also briefly addressed.

[Borrero v. State](#), 4D18-2118, 4D18-2119 (Apr. 22, 2020)

The trial court found that the defendant qualified as a violent felony offender of special concern, but failed to make any findings of dangerousness, which would require revocation of probation. This required a de novo resentencing hearing. The Fourth District rejected the defendant's argument that such findings had to be made by the jury. The Court previously addressed and rejected the same argument, and set forth its rationale in [Hollingsworth v. State](#), 4D18-3705 (Apr. 1, 2020).

[Jenkins v. State](#), 4D19-392 (Apr. 22, 2020)

The trial court erred by finding a violation of probation based on an uncharged offense. However, on the basis of other violations which were properly found, it was clear that the trial court would have imposed the same sentence. On remand, the trial court was directed to correct the revocation order to delete that violation.

[State v. Laurison](#), 4D19-1573 (Apr. 22, 2020)

The trial court dismissed the charge of public assistance fraud under sections 414.39(1)(a) and (5)(b), Florida Statutes (2015). Contrary to the trial court's interpretation of subsection (5)(b), the State was not required to prove the "defendant committed fraud in each of the twelve consecutive months. The State was required to prove only that "the public assistance wrongfully received, retained, misappropriated, sought or used was of an aggregate value of \$200 or more during a twelve consecutive month period." The relevant language in subsection (5)(b) was: "[i]f the value of the public assistance . . . is of an aggregate value of \$200 or more . . . in any of the 12 months. . . ."

Fifth District Court of Appeal

[Smith v. State](#), 5D19-389 (Apr. 24, 2020)

The trial court granted a request for a competency evaluation at the start of trial, noting that it had not observed any indicia of incompetency in prior proceedings. The court, however, started jury selection, directed that the evaluation be done that night, and stated that the competency hearing would be held the next day. The defendant was not present during this, having waived his presence during jury selection.

The expert happened to be at the courthouse and was able to do an evaluation for this case, as well as Smith's other pending cases, that afternoon. Prior to holding the expedited competency hearing that afternoon, the court inquired about the defendant's presence. The defendant was in an adjoining holding cell. Counsel was not sure whether the defendant wanted to be present for the competency hearing. The defendant was not asked if he wanted to be present and was not advised of his right to be present. The competency hearing was held without the defendant and without objection. After testimony from the expert that the defendant was competent, the defendant was brought into the courtroom and heard the trial court's adoption of the expert's findings.

The failure of the court to afford the defendant the opportunity to be present for the competency hearing constituted a due process violation. Based upon a review of the entirety of the record, the appellate court found that although this was an error, it was harmless error.

[Senko v. State](#), 5D19-2328 (Apr. 24, 2020)

Without setting forth any facts of the case, the Fifth District cited Borkenchirker v. Hayes, 434 U.S. 357 (1978), for the holding that “in a pretrial setting, the Due Process Clause of the Fourteenth Amendment . . . does not prohibit a prosecutor from carrying out a threat, made during plea negotiations, to bring additional, more serious charges against an accused who refused to plead guilty to the originally-charged offense when it is undisputed that the additional charge is justified by the evidence, the prosecutor was in possession of this evidence when the original charge was filed, and the additional charge was filed solely because of the accused's failure to plea to the original charge.”

[Rodriguez v. State](#), 5D20-185 (Apr. 24, 2020)

A Rule 3.800(a) motion to correct an illegal sentence cannot be used to present a double jeopardy claim which challenges the validity of the underlying convictions.

A 10-year mandatory minimum sentence based on a firearm under section 775.087(2) was erroneous. At the time of the offense, in 2012, the relevant statutory provision provided for a three-year minimum sentence.